2013
CUMULATIVE POCKET SUPPLEMENT

IDAHO CODE

Compiled Under the Supervision of the
Idaho Code Commission

R. DANIEL BOWEN
JEREMY P. PISCA ANDREW P. DOMAN
COMMISSIONERS

TITLES 39(45-90), 40

Place this supplement in the pocket of the corresponding volume of the set

MICHIE

701 East Water Street
Charlottesville, VA 22902

www.lexisnexis.com

Customer Service: 1-800-833-9844

5042230

ISBN 978-0-672-83888-0 (Set)
ISBN 978-1-4224-8378-7

(Pub.42205)

PUBLISHER'S NOTE

Amendments to laws and new laws enacted since the publication of the bound volume down to and including the 2013 regular session are compiled in this supplement and will be found under their appropriate section numbers.

This publication contains annotations taken from decisions of the Idaho Supreme Court and the Court of Appeals and the appropriate federal courts. These cases will be printed in the following reports:

Idaho Reports
Pacific Reporter, 3rd Series
Federal Supplement, 2nd Series
Federal Reporter, 3rd Series
United States Supreme Court Reports, Lawyers' Edition, 2nd Series

Title and chapter analyses, in these supplements, carry only laws that have been amended or new laws. Old sections that have nothing but annotations are not included in the analyses.

Following is an explanation of the abbreviations of the Court Rules used throughout the Idaho Code.

I.R.C.P.	Idaho Rules of Civil Procedure
I.R.E.	Idaho Rules of Evidence
I.C.R.	Idaho Criminal Rules
M.C.R.	Misdemeanor Criminal Rules
I.I.R.	Idaho Infraction Rules
I.J.R.	Idaho Juvenile Rules
I.C.A.R.	Idaho Court Administrative Rules
I.A.R.	Idaho Appellate Rules

If you have any questions or suggestions concerning the Idaho Code, please write or call toll free 1-800-833-9844, fax toll free at 1-800-643-1280, or email us at customer.support@bender.com.

Visit our website at http://www.lexisnexis.com for an online bookstore, technical support, customer service, and other company information.

LexisNexis
Attn: Customer Service
1275 Broadway
Albany, NY 12204-2694

ALWAYS CONSULT THE LATEST SUPPLEMENT IN CONNECTION WITH THE PERMANENT VOLUME

USER'S GUIDE

To assist the legal profession and the layperson in obtaining the maximum benefit from the Idaho Code, a User's Guide has been included in the first, bound volume of this set.

ADJOURNMENT DATES OF SESSIONS OF LEGISLATURE

Year	Adjournment Date
2012	March 29, 2012
2013	April 4, 2013

TITLE 39

HEALTH AND SAFETY

CHAPTER 45

THE MEDICAL CONSENT AND NATURAL DEATH ACT

39-4501. Purposes — Application. — (1) The primary purposes of this chapter are:

(a) To provide and codify Idaho law concerning consent for the furnishing of hospital, medical, dental, surgical and other health care, treatment or procedures, and concerning what constitutes an informed consent for such health care, treatment or procedures; and

(b) To provide certainty and clarity in the law of medical consent in the furtherance of high standards of health care and its ready availability in proper cases.

(2) Nothing in this chapter shall be deemed to amend or repeal the provisions of chapter 3 or chapter 4, title 66, Idaho Code, as those provisions pertain to hospitalization or commitment of people with mental illness or developmental disability or the powers of guardians of developmentally disabled persons, nor the provisions of chapter 6, title 18, Idaho Code, pertaining to the provision of examinations, prescriptions, devices and informational materials regarding prevention of pregnancy or pertaining to therapeutic abortions and consent to the performance thereof.

(3) Nothing in this chapter shall be construed to permit or require the

provision of health care for a patient in contravention of the patient's stated or implied objection thereto upon religious grounds nor shall anything in this chapter be construed to require the granting of permission for or on behalf of any patient who is not able to act for himself by his parent, spouse or guardian in violation of the religious beliefs of the patient or the patient's parent or spouse.

History.
I.C., § 39-4501, as added by 2005, ch. 120, § 2, p. 380; am. 2006, ch. 214, § 1, p. 645; am. 2007, ch. 196, § 1, p. 579; am. 2012, ch. 302, § 1, p. 825.

STATUTORY NOTES

Amendments.
The 2012 amendment, by ch. 302, substituted "surgical and other health care" for "or surgical care" and substituted "for such health care" for "for such care" in paragraph (1)(a) and substituted "hospitalization or commitment of people with mental illness or developmental disability or the powers of guardians of developmentally disabled persons" for "hospitalization of the mentally ill" in subsection (2).

39-4502. Definitions. — As used in this chapter:

(1) "Advanced practice professional nurse" (APPN) means a professional nurse licensed in this state who has gained additional specialized knowledge, skills and experience through a nationally accredited program of study as defined by section 54-1402, Idaho Code, and is authorized to perform advanced nursing practice, which may include direct client care such as assessing, diagnosing, planning and prescribing pharmacologic and nonpharmacologic therapeutic and corrective measures, health promotion and preventive care as defined by rules of the board of nursing. The advanced practice professional nurse collaborates with other health professionals in providing health care.

(2) "Artificial life-sustaining procedure" means any medical procedure or intervention that utilizes mechanical means to sustain or supplant a vital function which, when applied to a qualified patient, would serve only to artificially prolong life. "Artificial life-sustaining procedure" does not include the administration of pain management medication or the performance of any medical procedure deemed necessary to provide comfort care or to alleviate pain.

(3) "Artificial nutrition and hydration" means supplying food and water through a conduit, such as a tube or intravenous line, where the recipient is not required to chew or swallow voluntarily, but does not include assisted feeding, such as spoon feeding or bottle feeding.

(4) "Attending physician" means the physician licensed by the state board of medicine who is selected by, or assigned to, the patient and who has primary responsibility for the treatment and care of the patient.

(5) "Cardiopulmonary resuscitation" or "CPR" means measures to restore cardiac function and/or to support ventilation in the event of cardiac or respiratory arrest.

(6) "Comfort care" means treatment and care to provide comfort and cleanliness. "Comfort care" includes:

(a) Oral and body hygiene;

(b) Reasonable efforts to offer food and fluids orally;

(c) Medication, positioning, warmth, appropriate lighting and other measures to relieve pain and suffering; and

(d) Privacy and respect for the dignity and humanity of the patient.

(7) "Consent to care" includes refusal to consent to care and/or withdrawal of care.

(8) "Directive," "advance directive" or "health care directive" means a document that substantially meets the requirements of section 39-4510(1), Idaho Code, or is a "Physician Orders for Scope of Treatment" (POST) form or is another document which represents a competent person's authentic expression of such person's wishes concerning his or her health care.

(9) "Emergency medical services personnel" means personnel engaged in providing initial emergency medical assistance including, but not limited to, first responders, emergency medical technicians and paramedics.

(10) "Health care provider" or "provider" means any person or entity licensed, certified, or otherwise authorized by law to administer health care in the ordinary course of business or practice of a profession, including emergency or other medical services personnel.

(11) "Persistent vegetative state" means an irreversible state that has been medically confirmed by a neurological specialist who is an expert in the examination of nonresponsive individuals in which the person has intact brain stem function but no higher cortical function and no awareness of self or environment.

(12) "Physician" means a person who holds a current active license to practice medicine and surgery or osteopathic medicine and surgery in Idaho and is in good standing with no restriction upon or actions taken against his or her license.

(13) "Physician assistant" (PA) means any person, as defined in section 54-1803, Idaho Code, who is qualified by specialized education, training, experience and personal character and who has been licensed by the board of medicine to render patient services under the direction of a supervising and alternate supervising physician.

(14) "Physician orders for scope of treatment (POST) form" means a form that satisfies the requirements of section 39-4512A, Idaho Code.

(15) "Physician orders for scope of treatment (POST) identification device" means standardized jewelry which can be worn around the wrist, neck or ankle, and which has been approved by the department of health and welfare. Such jewelry shall be issued only to persons who have a POST form complying with section 39-4512A, Idaho Code, stating that such person has chosen "Do Not Resuscitate: Allow Natural Death (No Code/DNR/DNAR): No CPR or advanced cardiac life support interventions" or the equivalent choice.

(16) "Surrogate decision maker" means the person authorized to consent to or refuse health care for another person as specified in section 39-4504(1), Idaho Code.

(17) "Terminal condition" means an incurable or irreversible condition which, without the administration of life-sustaining procedures, will, in the opinion of a physician, result in death if it runs its usual course.

History.
I.C., § 39-4502, as added by 2007, ch. 196, § 2, p. 579; am. 2012, ch. 302, § 2, p. 825.

STATUTORY NOTES

Amendments.
The 2012 amendment, by ch. 302, added subsections (1), (13), and (16) and renumbered the subsequent subsections accordingly; in subsection (8), inserted "'advance directive'", substituted "that substantially meets" for "meeting", deleted "signed by a physician" following "form", and added the ending beginning "or is another document"; in subsection (14), substituted "means a form that satisfies the requirements of section 39-4512A" for "means a standardized form containing orders by a physician that states a person's treatment wishes"; and added the second sentence in subsection (15).

39-4503. Persons who may consent to their own care. — Any person who comprehends the need for, the nature of and the significant risks ordinarily inherent in any contemplated hospital, medical, dental, surgical or other health care, treatment or procedure is competent to consent thereto on his or her own behalf. Any health care provider may provide such health care and services in reliance upon such a consent if the consenting person appears to the health care provider securing the consent to possess such requisite comprehension at the time of giving the consent.

History.
I.C., § 39-4502, as added by 2005, ch. 120, § 2, p. 380; am. and redesig. 2007, ch. 196, § 3, p. 579; am. 2012, ch. 302, § 3, p. 825.

STATUTORY NOTES

Amendments.
The 2012 amendment, by ch. 302, substituted "Any person who comprehends" for "Any person of ordinary intelligence and awareness sufficient for him or her generally to comprehend" near the beginning and substituted "surgical and other health care" for "or surgical care" near the end of the first sentence and substituted "comprehension" for "intelligence and awareness" in the second sentence.

39-4504. Persons who may give consent to care for others. — (1) Consent for the furnishing of hospital, medical, dental, surgical or other health care, treatment or procedures to any person who is not then capable of giving such consent as provided in this chapter or who is a minor may be given or refused in the order of priority set forth hereafter; provided however, that the surrogate decision maker shall have sufficient comprehension as required to consent to his or her own health care pursuant to the provisions of section 39-4503, Idaho Code; and provided further that the surrogate decision maker shall not have authority to consent to or refuse health care contrary to such person's advance directives, POST or wishes expressed by such person while the person was capable of consenting to his or her own health care:

(a) The court appointed guardian of such person;

(b) The person named in another person's "Living Will and Durable Power of Attorney for Health Care" pursuant to section 39-4510, Idaho Code, or a similar document authorized by this chapter if the conditions in such living will for authorizing the agent to act have been satisfied;

(c) If married, the spouse of such person;

(d) An adult child of such person;

(e) A parent of such person;

(f) The person named in a delegation of parental authority executed pursuant to section 15-5-104, Idaho Code;

(g) Any relative of such person who represents himself or herself to be an appropriate, responsible person to act under the circumstances;

(h) Any other competent individual representing himself or herself to be responsible for the health care of such person; or

(i) If the person presents a medical emergency or there is a substantial likelihood of his or her life or health being seriously endangered by withholding or delay in the rendering of such hospital, medical, dental, surgical or other health care to such person and the person has not communicated and is unable to communicate his or her treatment wishes, the attending health care provider may, in his or her discretion, authorize and/or provide such health care, as he or she deems appropriate, and all persons, agencies and institutions thereafter furnishing the same, including such health care provider, may proceed as if informed, valid consent therefor had been otherwise duly given.

(2) No person who, in good faith, gives consent or authorization for the provision of hospital, medical, dental, surgical or other health care, treatment or procedures to another person as provided by this chapter shall be subject to civil liability therefor.

(3) No health care provider who, in good faith, obtains consent from a person pursuant to either section 39-4503 or 39-4504(1), Idaho Code, shall be subject to civil liability therefor.

History.

I.C., § 39-4503, as added by 2005, ch. 120, § 2, p. 380; am. and redesig. 2007, ch. 196, § 4, p. 579; am. 2012, ch. 302, § 4, p. 825.

STATUTORY NOTES

Amendments.

The 2012 amendment, by ch. 302, in subsection (1), rewrote the introductory paragraph, adding the two provisos; substituted "court appointed" for "legal" in paragraph (a), added "if the conditions in such living will for authorizing the agent to act have been satisfied" in paragraph (b), added paragraphs (d) and (f), redesignating the subsequent paragraphs, and substituted "health care provider" for "physician or dentist" twice in paragraph (i); and, in subsection (2), inserted "or other health" and substituted "to another person" for "to another."

39-4506. Sufficiency of consent. — Consent, or refusal to consent, for the furnishing of health care, treatment or procedures shall be valid in all respects if the person giving or refusing the consent is sufficiently aware of pertinent facts respecting the need for, the nature of, and the significant risks ordinarily attendant upon such a person receiving such care, as to permit the giving or withholding of such consent to be a reasonably informed decision. Any such consent shall be deemed valid and so informed if the health care provider to whom it is given or by whom it is secured has made such disclosures and given such advice respecting pertinent facts and considerations as would ordinarily be made and given under the same or similar circumstances, by a like health care provider of good standing practicing in the same community. As used in this section, the term "in the

same community" refers to that geographic area ordinarily served by the licensed general hospital at or nearest to which such consent is given.

History.
I.C., § 39-4505, as added by 2005, ch. 120, § 2, p. 380; am. and redesig. 2007, ch. 196, § 6, p. 579; am. 2012, ch. 302, § 5, p. 825.

STATUTORY NOTES

Amendments.
The 2012 amendment, by ch. 302, substituted "health care" for "hospital, medical, dental or surgical care" near the beginning of the first sentence and substituted "health care provider" for "physician or dentist" twice in the second sentence.

39-4508. Responsibility for consent and documentation. — Obtaining sufficient consent for health care is the duty of the attending health care provider upon whose order or at whose direction the contemplated health care, treatment or procedure is rendered; provided however, a licensed hospital and any employee of a health care provider, acting with the approval of such an attending or other individual health care provider, may perform the ministerial act of documenting such consent by securing the completion and execution of a form or statement in which the giving of consent for such care is documented by or on behalf of the person. In performing such a ministerial act, the hospital or health care provider employee shall not be deemed to have engaged in the practice of medicine or dentistry.

History.
I.C., § 39-4507, as added by 2005, ch. 120, § 2, p. 380; am. and redesig. 2007, ch. 196, § 8, p. 579; am. 2012, ch. 302, § 6, p. 825.

STATUTORY NOTES

Amendments.
The 2012 amendment, by ch. 302, in the first sentence, substituted "Obtaining sufficient consent for health care is the duty of the attending health care provider upon whose order or at whose direction the contemplated health care, treatment or procedure is rendered" for "Obtaining consent for health care is the duty of the attending physician or dentist or of another physician or dentist acting on his or her behalf or actually providing the contemplated care, treatment or procedure," substituted "employee of a health care provider" for "medical or dental office employee," and substituted "individual health care provider" for "physician or dentist"; and substituted "health care provider employee" for "medical or dental office employee" in the last sentence.

39-4509. Statement of policy — Definition. — For purposes of sections 39-4509 through 39-4515, Idaho Code:

(1) The legislature recognizes the established common law and the fundamental right of competent persons to control the decisions relating to the rendering of their medical care, including the decision to have life-sustaining procedures withheld or withdrawn. The legislature further finds that modern medical technology has made possible the artificial prolongation of human life beyond natural limits. The legislature further finds that persons are sometimes unable to express their desire to withhold or withdraw such artificial life prolongation procedures which provide nothing

medically necessary or beneficial to the person because of the person's inability to communicate with the health care provider.

(2) In recognition of the dignity and privacy which persons have a right to expect, the legislature hereby declares that the laws of this state shall recognize the right of a competent person to have his or her wishes for medical treatment and for the withdrawal of artificial life-sustaining procedures carried out even though that person is no longer able to communicate with the health care provider.

(3) It is the intent of the legislature to establish an effective means for such communication. It is not the intent of the legislature that the procedures described in sections 39-4509 through 39-4515, Idaho Code, are the only effective means of such communication, and nothing in sections 39-4509 through 39-4515, Idaho Code, shall impair or supersede any legal right or legal responsibility which a person may have to effect the withholding or withdrawal of life-sustaining procedures in any lawful manner, provided that this sentence shall not be construed to authorize any violation of section 39-4514(3), Idaho Code. Any authentic expression of a person's wishes with respect to health care should be honored.

(4) "Competent person" means any person who meets the requirements of section 39-4503, Idaho Code.

History.

I.C., § 39-4508, as added by 2005, ch. 120, § 2, p. 380; am. and redesig. 2007, ch. 196, § 9, p. 579; am. 2012, ch. 302, § 7, p. 825; am. 2012, ch. 305, § 1, p. 844.

STATUTORY NOTES

Amendments.

This section was amended by two 2012 acts which appear to be compatible and have been compiled together.

The 2012 amendment, by ch. 302, in subsections (1) and (2), substituted "person" or a variant thereof for "patient" or a variant thereof and substituted "health care provider" for "physician" twice; and substituted "who meets the requirements of section 39-4503, Idaho Code" for "emancipated minor or person eighteen (18) or more years of age who is of sound mind" in subsection (4).

The 2012 amendment, by ch. 305, added the proviso at the end of the second sentence in subsection (3).

39-4510. Living will and durable power of attorney for health care. — (1) Any competent person may execute a document known as a "Living Will and Durable Power of Attorney for Health Care." Such document shall be in substantially the following form, or in another form that contains the elements set forth in this chapter. Any portions of the "Living Will and Durable Power of Attorney for Health Care" which are left blank by the person executing the document shall be deemed to be intentional and shall not invalidate the document.

LIVING WILL AND DURABLE POWER OF ATTORNEY FOR HEALTH CARE

Date of Directive: .....

Name of person executing Directive: .....
Address of person executing Directive: .....

A LIVING WILL
A Directive to Withhold or to Provide Treatment

1. I willfully and voluntarily make known my desire that my life shall not be prolonged artificially under the circumstances set forth below. This Directive shall only be effective if I am unable to communicate my instructions and:

a. I have an incurable or irreversible injury, disease, illness or condition, and a medical doctor who has examined me has certified:

1. That such injury, disease, illness or condition is terminal; and
2. That the application of artificial life-sustaining procedures would serve only to prolong artificially my life; and
3. That my death is imminent, whether or not artificial life-sustaining procedures are utilized; or

b. I have been diagnosed as being in a persistent vegetative state.

In such event, I direct that the following marked expression of my intent be followed, and that I receive any medical treatment or care that may be required to keep me free of pain or distress.

Check one box and initial the line after such box:

☐ ..... I direct that all medical treatment, care and procedures necessary to restore my health and sustain my life be provided to me. Nutrition and hydration, whether artificial or nonartificial, shall not be withheld or withdrawn from me if I would likely die primarily from malnutrition or dehydration rather than from my injury, disease, illness or condition.

OR

☐ ..... I direct that all medical treatment, care and procedures, including artificial life-sustaining procedures, be withheld or withdrawn, except that nutrition and hydration, whether artificial or nonartificial shall not be withheld or withdrawn from me if, as a result, I would likely die primarily from malnutrition or dehydration rather than from my injury, disease, illness or condition, as follows: (If none of the following boxes are checked and initialed, then both nutrition and hydration, of any nature, whether artificial or nonartificial, shall be administered.)

Check one box and initial the line after such box:

A. ☐ ..... Only hydration of any nature, whether artificial or nonartificial, shall be administered;

B. ☐ ..... Only nutrition, of any nature, whether artificial or nonartificial, shall be administered;

C. ☐ ..... Both nutrition and hydration, of any nature, whether artificial or nonartificial shall be administered.

OR

☐ ..... I direct that all medical treatment, care and procedures be withheld or withdrawn, including withdrawal of the administration of artificial nutrition and hydration.

2. If I have been diagnosed as pregnant, this Directive shall have no force during the course of my pregnancy.

3. I understand the full importance of this Directive and am mentally competent to make this Directive. No participant in the making of this Directive or in its being carried into effect shall be held responsible in any way for complying with my directions.

4. Check one box and initial the line after such box:

☐ ..... I have discussed these decisions with my physician, advanced practice professional nurse or physician assistant and have also completed a Physician Orders for Scope of Treatment (POST) form that contains directions that may be more specific than, but are compatible with, this Directive. I hereby approve of those orders and incorporate them herein as if fully set forth.

OR

☐ ..... I have not completed a Physician Orders for Scope of Treatment (POST) form. If a POST form is later signed by my physician, advanced practice professional nurse or physician assistant, then this living will shall be deemed modified to be compatible with the terms of the POST form.

A DURABLE POWER OF ATTORNEY FOR HEALTH CARE

1. DESIGNATION OF HEALTH CARE AGENT. None of the following may be designated as your agent: (1) your treating health care provider; (2) a nonrelative employee of your treating health care provider; (3) an operator of a community care facility; or (4) a nonrelative employee of an operator of a community care facility. If the agent or an alternate agent designated in this Directive is my spouse, and our marriage is thereafter dissolved, such designation shall be thereupon revoked.

I do hereby designate and appoint the following individual as my attorney in fact (agent) to make health care decisions for me as authorized in this Directive. (Insert name, address and telephone number of one individual only as your agent to make health care decisions for you.)

Name of Health Care Agent: .....
Address of Health Care Agent: .....
Telephone Number of Health Care Agent: .....

For the purposes of this Directive, "health care decision" means consent, refusal of consent, or withdrawal of consent to any care, treatment, service or procedure to maintain, diagnose or treat an individual's physical condition.

2. CREATION OF DURABLE POWER OF ATTORNEY FOR HEALTH CARE. By this portion of this Directive, I create a durable power of attorney for health care. This power of attorney shall not be affected by my subsequent incapacity. This power shall be effective only when I am unable to communicate rationally.

3. GENERAL STATEMENT OF AUTHORITY GRANTED. I hereby grant to my agent full power and authority to make health care decisions for me to the same extent that I could make such decisions for myself if I had the capacity to do so. In exercising this authority, my agent shall make health care decisions that are consistent with my desires as stated in this Directive or otherwise made known to my agent including, but not limited to, my desires concerning obtaining or refusing or withdrawing artificial life-sustaining care, treatment, services and procedures, including such desires set forth in a living will, Physician Orders for Scope of Treatment (POST) form, or similar document executed by me, if any. (If you want to limit the authority of your agent to make health care decisions for you, you can state the limitations in paragraph 4 ("Statement of Desires, Special Provisions, and Limitations") below. You can indicate your desires by including a statement of your desires in the same paragraph.)

4. STATEMENT OF DESIRES, SPECIAL PROVISIONS, AND LIMITATIONS. (Your agent must make health care decisions that are consistent with your known desires. You can, but are not required to, state your desires in the space provided below. You should consider whether you want to include a statement of your desires concerning artificial life-sustaining care, treatment, services and procedures. You can also include a statement of your desires concerning other matters relating to your health care, including a list of one or more persons whom you designate to be able to receive medical information about you and/or to be allowed to visit you in a medical institution. You can also make your desires known to your agent by discussing your desires with your agent or by some other means. If there are any types of treatment that you do not want to be used, you should state them in the space below. If you want to limit in any other way the authority given your agent by this Directive, you should state the limits in the space below. If you do not state any limits, your agent will have broad powers to make health care decisions for you, except to the extent that there are limits provided by law.) In exercising the authority under this durable power of attorney for health care, my agent shall act consistently with my desires as stated below and is subject to the special provisions and limitations stated in my Physician Orders for Scope of Treatment (POST) form, a living will, or similar document executed by me, if any. Additional statement of desires, special provisions, and limitations: ..... (You may attach additional pages or documents if you need more space to complete your statement.)

5. INSPECTION AND DISCLOSURE OF INFORMATION RELATING TO MY PHYSICAL OR MENTAL HEALTH.

A. General Grant of Power and Authority. Subject to any limitations in this Directive, my agent has the power and authority to do all of the following: (1) Request, review and receive any information, verbal or written, regarding my physical or mental health including, but not limited to, medical and hospital records; (2) Execute on my behalf any releases or other documents that may be required in order to obtain this information; (3) Consent to the disclosure of this information; and (4) Consent to the donation of any of my

organs for medical purposes. (If you want to limit the authority of your agent to receive and disclose information relating to your health, you must state the limitations in paragraph 4 ("Statement of Desires, Special Provisions, and Limitations") above.)

B. HIPAA Release Authority. My agent shall be treated as I would be with respect to my rights regarding the use and disclosure of my individually identifiable health information or other medical records. This release authority applies to any information governed by the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. 1320d and 45 CFR 160 through 164. I authorize any physician, health care professional, dentist, health plan, hospital, clinic, laboratory, pharmacy, or other covered health care provider, any insurance company, and the MIB Group, Inc. (formerly the Medical Information Bureau, Inc.) or other health care clearinghouse that has provided treatment or services to me, or that has paid for or is seeking payment from me for such services, to give, disclose and release to my agent, without restriction, all of my individually identifiable health information and medical records regarding any past, present or future medical or mental health condition, including all information relating to the diagnosis of HIV/AIDS, sexually transmitted diseases, mental illness, and drug or alcohol abuse. The authority given my agent shall supersede any other agreement that I may have made with my health care providers to restrict access to or disclosure of my individually identifiable health information. The authority given my agent has no expiration date and shall expire only in the event that I revoke the authority in writing and deliver it to my health care provider.

6. SIGNING DOCUMENTS, WAIVERS AND RELEASES. Where necessary to implement the health care decisions that my agent is authorized by this Directive to make, my agent has the power and authority to execute on my behalf all of the following: (a) Documents titled, or purporting to be, a "Refusal to Permit Treatment" and/or a "Leaving Hospital Against Medical Advice"; and (b) Any necessary waiver or release from liability required by a hospital or physician.

7. DESIGNATION OF ALTERNATE AGENTS. (You are not required to designate any alternate agents but you may do so. Any alternate agent you designate will be able to make the same health care decisions as the agent you designated in paragraph 1 above, in the event that agent is unable or ineligible to act as your agent. If an alternate agent you designate is your spouse, he or she becomes ineligible to act as your agent if your marriage is thereafter dissolved.) If the person designated as my agent in paragraph 1 is not available or becomes ineligible to act as my agent to make a health care decision for me or loses the mental capacity to make health care decisions for me, or if I revoke that person's appointment or authority to act as my agent to make health care decisions for me, then I designate and appoint the following persons to serve as my agent to make health care decisions for me as authorized in this Directive, such persons to serve in the order listed below:

A. First Alternate Agent:
Name .....
Address .....
Telephone Number .....

B. Second Alternate Agent:
Name .....
Address .....
Telephone Number .....

C. Third Alternate Agent:
Name .....
Address .....
Telephone Number .....

8. PRIOR DESIGNATIONS REVOKED. I revoke any prior durable power of attorney for health care.

DATE AND SIGNATURE OF PRINCIPAL. (You must date and sign this Living Will and Durable Power of Attorney for Health Care.)

I sign my name to this Statutory Form Living Will and Durable Power of Attorney for Health Care on the date set forth at the beginning of this Form at ..... (City, State).....

.....
Signature

(2) A health care directive meeting the requirements of subsection (1) of this section may be registered with the secretary of state pursuant to the provisions of section 39-4515, Idaho Code. Failure to register the health care directive shall not affect the validity of the health care directive.

History.
I.C., § 39-4510, as added by 2005, ch. 120, § 2, p. 380; am. 2006, ch. 67, § 3, p. 199; am. 2007, ch. 196, § 11, p. 579; am. 2012, ch. 302, § 8, p. 825.

STATUTORY NOTES

Amendments.
The 2012 amendment, by ch. 302, inserted "advanced practice professional nurse or physician assistant" in both paragraphs of 4, under "A LIVING WILL" and inserted "the MIB Group, Inc." in the third sentence of 5.B. under "A DURABLE POWER OF ATTORNEY FOR HEALTH CARE".

39-4511. [Amended and Redesignated.]

STATUTORY NOTES

Compiler's Notes.
Former § 39-4511 was amended and redesignated as § 39-4511A by S.L. 2012, ch. 302, § 9, effective July 1, 2012.

39-4511A. Revocation. — (1) A living will and durable power of attorney for health care or physician orders for scope of treatment (POST)

form or other similar advance directive may be revoked at any time by the maker thereof by any of the following methods:

(a) By being intentionally canceled, defaced, obliterated or burned, torn, or otherwise destroyed by the maker thereof, or by some person in his presence and by his direction;

(b) By a written, signed revocation of the maker thereof expressing his intent to revoke; or

(c) By an oral expression by the maker thereof expressing his intent to revoke.

(2) The maker of the revoked living will and durable power of attorney for health care is responsible for notifying his health care provider of the revocation.

(3) There shall be no criminal or civil liability on the part of any person for the failure to act upon a revocation of a living will and durable power of attorney for health care, physician orders for scope of treatment (POST) form or other advance directive made pursuant to this chapter unless that person has actual knowledge of the revocation.

History.

I.C., § 39-4511, as added by 2005, ch. 120, § 2, p. 380; am. 2006, ch. 67, § 4, p. 199; am. 2007, ch. 196, § 12, p. 579; am. and redesig. 2012, ch. 302, § 9, p. 825.

STATUTORY NOTES

Amendments.

The 2012 amendment, by ch. 302, redesignated the section from § 39-4511; in subsection (1), inserted "or other similar advance directive" in the introductory paragraph and "intentionally" in paragraph (a); substituted "health care provider" for "physician" in subsection (2); and, in subsection (3), inserted "or other advance directive" and substituted "this chapter" for "this section."

Compiler's Notes.

This section was formerly compiled as § 39-4511.

39-4511B. Suspension. — (1) A living will and durable power of attorney for health care, physician orders for scope of treatment (POST) form or other similar advance directive may be suspended at any time by the maker thereof by any of the following methods:

(a) By a written, signed suspension by the maker thereof expressing his intent to suspend; or

(b) By an oral expression by the maker thereof expressing his intent to suspend.

(2) Upon meeting the termination terms of the suspension, as defined by the written or oral expression by the maker, the conditions set forth in the living will and durable power of attorney, physician orders for scope of treatment (POST) or other similar advance directive will resume.

History.

I.C., § 39-4511B, as added by 2012, ch. 302, § 10, p. 825.

STATUTORY NOTES

Compiler's Notes.
The abbreviations enclosed in parentheses so appeared in the law as enacted.

39-4512A. Physician orders for scope of treatment (POST). — (1) A physician orders for scope of treatment (POST) form is a health care provider order signed by a physician or by a PA or by an APPN. The POST form must also be signed by the person, or it must be signed by the person's surrogate decision maker provided that the POST form is not contrary to the person's last known expressed wishes or directions.

(2) The POST form shall be effective from the date of execution unless suspended or revoked.

(3) The attending physician, APPN or PA shall, upon request of the person or the person's surrogate decision maker, provide the person or the person's surrogate decision maker with a copy of the POST form, discuss with the person or the person's surrogate decision maker the form's content and ramifications and treatment options, and assist the person or the person's surrogate decision maker in the completion of the form.

(4) The attending physician, APPN or PA shall review the POST form:

(a) Each time the physician, APPN or PA examines the person, or at least every seven (7) days, for persons who are hospitalized; and

(b) Each time the person is transferred from one (1) care setting or care level to another; and

(c) Any time there is a substantial change in the person's health status; and

(d) Any time the person's treatment preferences change.

Failure to meet these review requirements does not affect the POST form's validity or enforceability. As conditions warrant, the physician, APPN or PA may issue a superseding POST form. The physician, APPN or PA shall, whenever practical, consult with the person or the person's surrogate decision maker.

(5) A person who has completed a POST form pursuant to the provisions of this section or for whom a POST form has been completed at the request of his or her surrogate decision maker may wear a POST identification device as provided in section 39-4502(15), Idaho Code.

(6) The department of health and welfare shall develop the POST form.

History.
I.C., § 39-4512A, as added by 2007, ch. 196, § 13, p. 579; am. 2012, ch. 302, § 11, p. 825.

STATUTORY NOTES

Amendments.
The 2012 amendment, by ch. 302, rewrote this section to the extent that a detailed comparison is impracticable.

39-4512B. Adherence to physician orders for scope of treatment (POST) protocol. — (1) Health care providers and emergency medical services personnel shall comply with a person's physician orders for scope of

treatment (POST) instruction when presented with a POST form that meets the requirements of section 39-4512A, Idaho Code, or when a person is wearing a proper POST identification device pursuant to section 39-4512A(5), Idaho Code.

(2) A POST form that meets the requirements of section 39-4512A, Idaho Code, is deemed to meet the requirements of "Do Not Resuscitate (DNR)" orders at all Idaho health care facilities. Health care providers and emergency medical services personnel shall not require the completion of other forms in order for the person's wishes to be respected.

(3) Nothing in this chapter is intended to nor shall it prevent physicians or other health care providers from executing or utilizing DNR orders consistent with their licensure; provided however, that if the person or person's surrogate decision maker chooses to utilize the POST form, the health care provider shall accept and comply with the POST form and shall not require the completion of a DNR order in addition to a valid POST form.

History.
I.C., § 39-4512B, as added by 2007, ch. 196, § 14, p. 579; am. 2012, ch. 302, § 12, p. 825.

STATUTORY NOTES

Amendments.
The 2012 amendment, by ch. 302, inserted "that meets the requirements of section 39-4512A, Idaho Code" in both subsections (1) and (2), deleted "signed by a physician" following "POST form" in subsection (1), and added subsection (3).

39-4513. Immunity. — (1) No emergency medical services personnel, health care provider, facility, or individual employed by, acting as the agent of, or under contract with any such health care provider or facility shall be civilly or criminally liable or subject to discipline for unprofessional conduct for acts or omissions carried out or performed in good faith pursuant to the directives in a facially valid POST form, living will, DNR order or other health care directive, or pursuant to a POST identification device as provided for in section 39-4512A(5), Idaho Code.

(2) Any physician or other health care provider who for ethical or professional reasons is incapable or unwilling to conform to the desires of the person who may give consent to care for the patient under section 39-4504, Idaho Code, as expressed by the procedures set forth in this chapter may, subject to the requirements of section 39-4514(3), Idaho Code, withdraw without incurring any civil or criminal liability provided the physician or other health care provider, before withdrawal of his or her participation, makes a good faith effort to assist the person in obtaining the services of another physician or other health care provider who is willing to provide care for the person in accordance with the person's expressed or documented wishes.

(3) No person who exercises the responsibilities of a durable power of attorney for health care in good faith shall be subject to civil or criminal liability as a result.

(4) Neither the registration of a health care directive in the health care directive registry under section 39-4515, Idaho Code, nor the revocation of

such a directive requires a health care provider to request information from that registry. The decision of a health care provider to request or not to request a health care directive document from the registry shall be immune from civil or criminal liability. A health care provider who in good faith acts in reliance on a facially valid health care directive received from the health care directive registry shall be immune from civil or criminal liability for those acts done in such reliance.

(5) Health care providers and emergency medical services personnel may disregard the POST form or a POST identification device or a DNR order:

(a) If they believe in good faith that the order has been revoked; or

(b) To avoid oral or physical confrontation; or

(c) If ordered to do so by the attending physician.

History.

I.C., § 39-4513, as added by 2005, ch. 120, § 2, p. 380; am. 2006, ch. 67, § 5, p. 199; am. 2007, ch. 196, § 16, p. 579; am. 2012, ch. 302, § 13, p. 825; am. 2012, ch. 305, § 2, p. 844.

STATUTORY NOTES

Amendments.

This section was amended by two 2012 acts which appear to be compatible and have been compiled together.

The 2012 amendment, by ch. 302, substituted the current ending of subsection (1) beginning "DNR order" for "by the holder of a facially valid durable power of attorney or directive for health care"; added "or a DNR order" in the introductory paragraph in subsection (5); and substituted "person" for "patient" throughout the section.

The 2012 amendment, by ch. 305, in subsection (2), substituted "person who may give consent to care for the patient under section 39-4504, Idaho Code" for "patient" and inserted "subject to the requirements of section 39-4514(3), Idaho Code".

39-4514. General provisions. — (1) Application. Except as specifically provided herein, sections 39-4510 through 39-4512B, Idaho Code, shall have no effect or be in any manner construed to apply to persons not executing a living will and durable power of attorney for health care, POST form or other health care directive pursuant to this chapter nor shall these sections in any manner affect the rights of any such persons or of others acting for or on behalf of such persons to give or refuse to give consent or withhold consent for any medical care; neither shall sections 39-4510 through 39-4512B, Idaho Code, be construed to affect chapter 3 or chapter 4, title 66, Idaho Code, in any manner.

(2) Euthanasia, mercy killing, or assisted suicide. This chapter does not make legal, and in no way condones, euthanasia, mercy killing, or assisted suicide or permit an affirmative or deliberate act or omission to end life, including any act or omission described in section 18-4017, Idaho Code, other than to allow the natural process of dying.

(3) Withdrawal of care. Assisted feeding or artificial nutrition and hydration may not be withdrawn or denied if its provision is directed by a competent patient in accordance with section 39-4503, Idaho Code, by a patient's health care directive under section 39-4510, Idaho Code, or by a patient's surrogate decision maker in accordance with section 39-4504, Idaho Code. Health care necessary to sustain life or to provide appropriate comfort for a patient other than assisted feeding or artificial nutrition and hydration may not be withdrawn or denied if its provision is directed by a

competent patient in accordance with section 39-4503, Idaho Code, by a patient's health care directive under section 39-4510, Idaho Code, or by a patient's surrogated decision maker in accordance with section 39-4504, Idaho Code, unless such care would be futile care as defined in subsection (6) of this section. Except as specifically provided in chapters 3 and 4, title 66, Idaho Code, health care, assisted feeding or artificial nutrition and hydration, the denial of which is directed by a competent patient in accordance with section 39-4503, Idaho Code, by a patient's health care directive under section 39-4510, Idaho Code, or by a patient's surrogate decision maker in accordance with section 39-4504, Idaho Code, shall be withdrawn and denied in accordance with a valid directive. This subsection does not require provision of treatment to a patient if it would require denial of the same or similar treatment to another patient.

(4) Comfort care. Persons caring for a person for whom artificial life-sustaining procedures or artificially administered nutrition and hydration are withheld or withdrawn shall provide comfort care as defined in section 39-4502, Idaho Code.

(5) Presumed consent to resuscitation. There is a presumption in favor of consent to cardiopulmonary resuscitation (CPR) unless:

(a) A completed durable power of attorney for health care or living will for that person is in effect, pursuant to section 39-4510, Idaho Code, in which the person has stated that he or she does not wish to receive cardiopulmonary resuscitation, and any terms set forth in the durable power of attorney for health care or living will upon which such statement is conditioned have been met; or

(b) The person's surrogate decision maker has communicated the person's wishes not to receive cardiopulmonary resuscitation and any terms on which the wishes not to receive cardiopulmonary resuscitation are conditioned have been met; or

(c) The person has a physician orders for scope of treatment (POST) form that meets the requirements of section 39-4512A, Idaho Code, stating that the person does not wish to receive cardiopulmonary resuscitation and any terms on which the statement is conditioned have been met and/or has a proper POST identification device pursuant to section 39-4502(15), Idaho Code.

(6) Futile care. Nothing in this chapter shall be construed to require medical treatment that is medically inappropriate or futile; provided that this subsection does not authorize any violation of subsection (3) of this section. Futile care does not include comfort care. Futile care is a course of treatment:

(a) For a patient with a terminal condition for whom, in reasonable medical judgment, death is imminent within hours or at most a few days whether or not the medical treatment is provided and that, in reasonable medical judgment, will not improve the patient's condition; or

(b) The denial of which in reasonable medical judgment will not result in or hasten the patient's death.

(7) Existing directives and directives from other states. A health care directive executed prior to July 1, 2012, but which was in the living will,

durable power of attorney for health care, DNR, or POST form pursuant to prior Idaho law at the time of execution, or in another form that contained the elements set forth in this chapter at the time of execution, shall be deemed to be in compliance with this chapter. Health care directives or similar documents executed in another state that substantially comply with this chapter shall be deemed to be in compliance with this chapter. This section shall be liberally construed to give the effect to any authentic expression of the person's prior wishes or directives concerning his or her health care.

(8) Insurance.

(a) The making of a living will and/or durable power of attorney for health care, physician orders for scope of treatment (POST) form, or DNR order pursuant to this chapter shall not restrict, inhibit or impair in any manner the sale, procurement or issuance of any policy of life insurance, nor shall it be deemed to modify the terms of an existing policy of life insurance. No policy of life insurance shall be legally impaired or invalidated in any manner by the withholding or withdrawal of artificial life-sustaining procedures from an insured person, notwithstanding any term of the policy to the contrary.

(b) No physician, health care facility or other health care provider and no health care service plan, insurer issuing disability insurance, self-insured employee plan, welfare benefit plan or nonprofit hospital service plan shall require any person to execute a living will and durable power of attorney for health care or physician orders for scope of treatment (POST) form, or DNR order as a condition for being insured for, or receiving, health care services.

(9) Portability and copies.

(a) A physician orders for scope of treatment (POST) form that meets the requirements of section 39-4512A, Idaho Code, shall be transferred with the person to, and be effective in, all care settings including, but not limited to, home care, ambulance or other transport, hospital, residential care facility, and hospice care. The POST form shall remain in effect until such time as there is a valid revocation pursuant to section 39-4511A, Idaho Code, or new orders are issued by a physician, APPN or PA.

(b) A photostatic, facsimile or electronic copy of a valid physician orders for scope of treatment (POST) form may be treated as an original by a health care provider or by an institution receiving or treating a person.

(10) Registration. A directive or the revocation of a directive meeting the requirements of this chapter may be registered with the secretary of state pursuant to section 39-4515, Idaho Code. Failure to register the health care directive shall not affect the validity of the health care directive.

(11) Rulemaking authority.

(a) The department of health and welfare shall adopt those rules and protocols necessary to administer the provisions of this chapter.

(b) In the adoption of a physician orders for scope of treatment (POST) or DNR protocol, the department shall adopt standardized POST identification devices to be used statewide.

History.

I.C., § 39-4514, as added by 2005, ch. 120, § 2, p. 380; am. 2007, ch. 196, § 17, p. 579; am. 2012, ch. 302, § 14, p. 825; am. 2012, ch. 305, § 3, p. 844; am. 2013, ch. 151, § 1, p. 349; am. 2013, ch. 187, § 5, p. 447.

STATUTORY NOTES

Amendments.

This section was amended by two 2012 acts which appear to be compatible and have been compiled together.

The 2012 amendment, by ch. 302, rewrote the section to the extent that a detailed comparison is impracticable.

The 2012 amendment, by ch. 305, added the exception at the beginning of subsection (1); added subsection (3), renumbering the subsequent subsections; and, in subsection (6), added "provided that this subsection does not authorize any violation of subsection (3) of this section. Futile care does not include comfort care. Futile care is a course of treatment" in the introductory paragraph and added paragraphs (a) and (b).

This section was amended by two 2013 acts which appear to be compatible and have been compiled together.

The 2013 amendment, by ch. 151, inserted "necessary to sustain life or to provide appropriate comfort for a patient" in the second sentence in subsection (3).

The 2013 amendment, by ch. 187, substituted "sections" for "Sections" near the beginning of subsection (1).

Compiler's Notes.

The abbreviations enclosed in parentheses so appeared in the law as enacted.

CHAPTER 57

PREVENTION OF MINORS' ACCESS TO TOBACCO

SECTION.

39-5702. Definitions. — The terms used in this chapter are defined as follows:

(1) "Business" means any company, partnership, firm, sole proprietorship, association, corporation, organization, or other legal entity, or a representative of the foregoing entities.

(2) "Delivery sale" means to distribute tobacco products or electronic cigarettes to a consumer in a state where either: (a) the individual submits the order for such sale by means of a telephonic or other method of voice transmission, data transfer via computer networks, including the internet and other online services, or facsimile, or the mails; or (b) the tobacco products or electronic cigarettes are delivered by use of the mails or a delivery service.

(3) "Delivery service" means any person who is engaged in the commercial delivery of letters, packages or other containers.

(4) "Department" means the state department of health and welfare or its duly authorized representative.

(5) "Distribute" means to give, deliver, sell, offer to give, offer to deliver,

offer to sell or cause any person to do the same or hire any person to do the same.

(6) "Electronic cigarette" means any device that can provide an inhaled dose of nicotine by delivering a vaporized solution. "Electronic cigarette" includes the components of an electronic cigarette including, but not limited to, liquid nicotine.

(7) "Minor" means a person under eighteen (18) years of age.

(8) "Minor exempt permit" means a permittee location whose revenues from the sale of alcoholic beverages for on-site consumption comprises at least fifty-five percent (55%) of total revenues, or whose products and services are primarily obscene, pornographic, profane or sexually oriented, is exempt from inspections assisted by a minor, if minors are not allowed in the location and such prohibition is posted clearly on all entrance doors.

(9) "Permit" means a permit issued by the department for the sale or distribution of tobacco products.

(10) "Permittee" means the holder of a valid permit for the sale or distribution of tobacco products.

(11) "Photographic identification" means state, district, territorial, possession, provincial, national or other equivalent government driver's license, identification card or military card, in all cases bearing a photograph and a date of birth, or a valid passport.

(12) "Random unannounced inspection" means an inspection of retail outlets by a law enforcement agency or by the department, with or without the assistance of a minor, to monitor compliance of this chapter.

(13) "Seller" means the person who physically sells or distributes tobacco products or electronic cigarettes.

(14) "Tobacco product" means any substance that contains tobacco including, but not limited to, cigarettes, cigars, pipes, snuff, smoking tobacco, tobacco papers or smokeless tobacco.

(15) "Vending machine" means any mechanical, electronic or other similar device which, upon the insertion of tokens, money or any other form of payment, dispenses tobacco products or electronic cigarettes.

(16) "Vendor assisted sales" means any sale or distribution in which the customer has no access to the product except through the assistance of the seller.

(17) "Without a permit" means a business that has failed to obtain a permit or a business whose permit is suspended or revoked.

History.

I.C., § 39-5702, as added by 1998, ch. 418, § 2, p. 1316; am. 2003, ch. 159, § 1, p. 449; am. 2003, ch. 273, § 1, p. 728; am. 2004, ch. 318, § 5, p. 892; am. 2012, ch. 39, § 1, p. 118.

STATUTORY NOTES

Amendments.

The 2012 amendment, by ch. 39, added subsection (6) and redesignated the subsequent subsections accordingly and inserted "or electronic cigarettes" twice in subsection (2) and at the ends of subsections (13) and (15).

39-5703. Possession, distribution or use by a minor. — (1) It shall

be unlawful for a minor to possess, receive, purchase, sell, distribute, use or consume tobacco products or electronic cigarettes or to attempt any of the foregoing.

(2) It shall be unlawful for a minor to provide false identification, or make any false statement regarding their age in an attempt to obtain tobacco products or electronic cigarettes.

(3) A minor who is assisting with a random unannounced inspection in accordance with this chapter shall not be in violation of this chapter.

(4) A minor may possess but not sell or distribute tobacco products or electronic cigarettes in the course of employment, for duties such as stocking shelves or carrying purchases to customers' vehicles.

(5) Penalties for violations by a minor. A violation of this chapter by a minor shall constitute a misdemeanor and shall be punishable by imprisonment in an appropriate facility not exceeding six (6) months, a fine not exceeding three hundred dollars ($300), or both such fine and imprisonment. The court may, in addition to the penalties provided herein, require the minor and the minor's parents or legal guardian to attend tobacco awareness programs or to perform community service in programs related to tobacco awareness.

History.
I.C., § 39-5703, as added by 1998, ch. 418, § 2, p. 1316; am. 2012, ch. 39, § 2, p. 118.

STATUTORY NOTES

Amendments.
The 2012 amendment, by ch. 39, inserted "or electronic cigarettes" in subsections (1), (2) and (4).

39-5705. Sale or distribution of tobacco products and electronic cigarettes to a minor. — (1) It shall be unlawful to sell, distribute or offer tobacco products or electronic cigarettes to a minor.

(2) It shall be an affirmative defense that the seller of a tobacco product or an electronic cigarette to a minor in violation of this section had requested, examined and reasonably relied upon a photographic identification from such person establishing that person's age as at least eighteen (18) years of age prior to selling such person a tobacco product or an electronic cigarette. The failure of a seller to request and examine photographic identification from a person under eighteen (18) years of age prior to the sale of a tobacco product or an electronic cigarette to such person shall be construed against the seller and form a conclusive basis for the seller's violation of this section.

History.
I.C., § 39-5705, as added by 1998, ch. 418, § 2, p. 1316; am. 2001, ch. 39, § 1, p. 74; am. 2012, ch. 39, § 3, p. 118.

STATUTORY NOTES

Amendments.
The 2012 amendment, by ch. 39, inserted "and electronic cigarettes" in the section heading, inserted "or electronic cigarettes" in subsection (1), and inserted "or an electronic cigarette" three times in subsection (2).

RESEARCH REFERENCES

A.L.R. — Validity, construction, and application of state and local laws providing for civil liability for tobacco sales or distribution to minors. 66 A.L.R.6th 315.

39-5706. Vendor assisted sales. — (1) It shall be unlawful to sell or distribute tobacco products or electronic cigarettes by any means other than vendor assisted sales where the customer has no access to the product except through the assistance of the seller.

(2) On and after January 1, 2000, it shall be unlawful to sell or distribute tobacco products from a vending machine.

(3) On and after January 1, 2013, it shall be unlawful to sell or distribute electronic cigarettes from a vending machine.

(4) It shall be unlawful to sell or distribute tobacco products or electronic cigarettes from self-service displays.

(5) Stores with tobacco products comprising at least seventy-five percent (75%) of total merchandise are exempt from requiring vendor assisted sales, if minors are not allowed in the store and such prohibition is posted clearly on all entrance doors.

History.
I.C., § 39-5706, as added by 1998, ch. 418, § 2, p. 1316; am. 2012, ch. 39, § 4, p. 118.

STATUTORY NOTES

Amendments.
The 2012 amendment, by ch. 39, inserted "or electronic cigarettes" in subsections (1) and (4); deleted the former second sentence of subsection (2), which read: "From January 1, 1999, to December 31, 1999, vending machines shall be located in a place not accessible to persons under the age of nineteen (19) years"; and added subsection (3), redesignating the subsequent subsections accordingly.

39-5708. Civil penalties for violations of permit — Civil penalty for violations relating to electronic cigarettes. — (1) Any permittee who fails to comply with any part of this chapter, or any current state or local law or rule or regulation regarding the sale or distribution of tobacco products shall be subject to a civil penalty as provided in this section or have their permit suspended, pursuant to compliance with the contested case provisions of the Idaho administrative procedure act, chapter 52, title 67, Idaho Code, or both.

(2) If a seller who is not a permittee violates section 39-5705, Idaho Code, and sells or distributes tobacco products or electronic cigarettes to a minor, then the seller shall be fined one hundred dollars ($100).

(3) In the case of a first violation, the permittee shall be notified in writing of penalties to be levied for further violations.

(4) In the case of a second violation, the permittee shall be fined two hundred dollars ($200) and shall be notified in writing of penalties to be levied for further violations. For a violation of section 39-5705, Idaho Code, the permittee shall not be fined if the permittee can show that a training program was in place for the employee and that the permittee has a form signed by that employee on file stating that they understand the tobacco

laws dealing with minors and the unlawful purchase of tobacco, but the permittee shall be notified in writing of penalties to be levied for any further violations. If no such training is in place, the permittee shall be fined two hundred dollars ($200).

(5) In the case of a third violation in a two (2) year period, the permittee shall be fined two hundred dollars ($200) and the permit may be suspended for up to seven (7) days. If the violation is by an employee, at the same location, who was involved in any previous citation for violation, the permittee shall be fined four hundred dollars ($400). Effective training and employment practices by the permittee, as determined by the department shall be a mitigating factor in determining permit suspension. Tobacco retailers must remove all tobacco products from all areas accessible to or visible to the public while the permit is suspended.

(6) In the case of four (4) or more violations within a two (2) year period, the permittee shall be fined four hundred dollars ($400) and the permit shall be revoked until such time that the permittee demonstrates an effective training plan to the department, but in no case shall the revocation be for less than thirty (30) days. Tobacco retailers must remove all tobacco products from all areas accessible to or visible to the public while the permit is revoked.

(7) All moneys collected for violations pursuant to this section shall be remitted to the prevention of minors' access to tobacco fund created in section 39-5711, Idaho Code.

History.
I.C., § 39-5708, as added by 1998, ch. 418, § 2, p. 1316; am. 2001, ch. 39, § 2, p. 74; am. 2012, ch. 39, § 5, p. 118.

STATUTORY NOTES

Amendments.
The 2012 amendment, by ch. 39, inserted "Civil penalty for violations relating to electronic cigarettes" in the section heading; designated the existing introductory paragraph as (1), redesignating the subsequent subsections accordingly; and, in subsection (2), inserted "or electronic cigarettes" and "then."

RESEARCH REFERENCES

A.L.R. — Validity, construction, and application of state and local laws providing for civil liability for tobacco sales or distribution to minors. 66 A.L.R.6th 315.

39-5710. Conduct of enforcement actions. — (1) It is the intent of the legislature that law enforcement agencies, the attorney general, and the department shall enforce this chapter and rules promulgated pursuant thereto in a manner that can reasonably be expected to significantly reduce the extent to which tobacco products and electronic cigarettes are sold or distributed to minors.

(2) Law enforcement agencies may conduct random, unannounced inspections at locations where tobacco products or electronic cigarettes are sold or distributed to ensure compliance with this chapter. A copy of all citations issued under this chapter shall be submitted to the department.

(3) The department shall conduct at least one (1) random, unannounced inspection per year at all locations where tobacco products are sold or

distributed at retail to ensure compliance with this chapter. The department shall conduct inspections for minor exempt permittees without the assistance of a minor. The department shall conduct inspections for all other permittees with the assistance of a minor. Each year the department shall conduct random unannounced inspections equal to the number of permittees multiplied by the violation percentage rate reported for the previous year multiplied by a factor of ten (10). Local law enforcement agencies are encouraged to contract with the department to perform these required inspections.

(4) Minors may assist with random, unannounced inspections with the written consent of a parent or legal guardian. When assisting with these inspections, minors shall not provide false identification, nor make any false statement regarding their age.

(5) Citizens may file a written complaint of noncompliance of this chapter with the department, or with a law enforcement agency. Permit holders under 26 U.S.C. section 5712, may file written complaints relating to delivery sales to the department or the attorney general's offices. Complaints shall be investigated and the proper enforcement actions taken.

(6) Within a reasonable time, not later than two (2) business days after an inspection has occurred, a representative of the business inspected shall be informed in writing of the results of the inspection.

(7) The attorney general or his designee, or any person who holds a permit under 26 U.S.C. section 5712, may bring an action in district court in Idaho to prevent or restrain violations of this chapter by any person or by any person controlling such person.

History.
I.C., § 39-5710, as added by 1998, ch. 418, § 2, p. 1316; am. 2001, ch. 39, § 3, p. 74; am. 2003, ch. 159, § 2, p. 449; am. 2003, ch. 273, § 2, p. 728; am. 2012, ch. 39, § 6, p. 118.

STATUTORY NOTES

Amendments.
The 2012 amendment, by ch. 39, inserted "and electronic cigarettes" near the end of subsection (1) and inserted "or electronic cigarettes" in the first sentence in subsection (2).

39-5713. Local ordinances. — Nothing in this chapter shall be construed to prohibit local units of government from passing ordinances which are more stringent than the provisions of this chapter. Provided however, local units of government shall not have the power to require a permit or license for the sale or distribution of tobacco products or electronic cigarettes.

History.
I.C., § 39-5713, as added by 1998, ch. 418, § 2, p. 1316; am. 2012, ch. 39, § 7, p. 118.

STATUTORY NOTES

Amendments.
The 2012 amendment, by ch. 39, added "or electronic cigarettes" at the end of the last sentence.

39-5714. Requirements for delivery sales. — (1) No permittee shall make a delivery sale of tobacco products to any individual who is under age eighteen (18) years in this state. No seller shall make a delivery sale of electronic cigarettes to any minor in this state.

(2) Each permittee taking a delivery sale order shall comply with: the age verification requirements set forth in section 39-5715, Idaho Code; the disclosure and notice requirements set forth in section 39-5716, Idaho Code; the shipping requirements set forth in section 39-5717, Idaho Code; the registration and reporting requirements set forth in section 39-5718, Idaho Code; all tax collection requirements provided by title 63, Idaho Code; and all other laws of the state of Idaho generally applicable to sales of tobacco products that occur entirely within Idaho including, but not limited to, those laws imposing excise taxes, sales and use taxes, licensing and tax stamping requirements and escrow or other payment obligations.

History.
I.C., § 39-5714, as added by 2003, ch. 273, § 3, p. 728; am. 2012, ch. 39, § 8, p. 118.

STATUTORY NOTES

Amendments.
The 2012 amendment, by ch. 39, added the last sentence in subsection (1).

39-5715. Age verification requirements. — (1) No permittee shall mail or ship tobacco products in connection with a delivery sale order unless, before mailing or shipping such tobacco products, the permittee accepting the delivery sale order first obtains from the prospective customer a certification that includes proof of age that the purchaser is at least eighteen (18) years old, the credit or debit card used for payment has been issued in the purchaser's name and the address to which the cigarettes are being shipped matches the credit card company's address for the cardholder.

(2) No seller shall mail or ship an electronic cigarette in connection with a delivery sale order unless, before mailing or shipping such electronic cigarette, the seller accepting the delivery sale order first obtains from the prospective customer a certification that includes proof of age that the purchaser is at least eighteen (18) years old, the credit or debit card used for payment has been issued in the purchaser's name and the address to which the electronic cigarette is being shipped matches the credit or debit card company's address for the cardholder.

History.
I.C., § 39-5715, as added by 2003, ch. 273, § 3, p. 728; am. 2012, ch. 39, § 9, p. 118.

STATUTORY NOTES

Amendments.
The 2012 amendment, by ch. 39, added the subsection (1) designation to the existing provisions and added subsection (2).

39-5717. Shipping requirements — Tobacco products. — Each

permittee who mails or ships tobacco products in connection with a delivery sale order shall include as part of the shipping documents a clear and conspicuous statement providing as follows:

"TOBACCO PRODUCTS: IDAHO LAW PROHIBITS SHIPPING TO INDIVIDUALS UNDER THE AGE OF EIGHTEEN YEARS, AND REQUIRES THE PAYMENT OF TAXES PURSUANT TO CHAPTER 25, TITLE 63, IDAHO CODE. PERSONS VIOLATING THIS MAY BE CIVILLY AND CRIMINALLY LIABLE."

Anyone delivering any such container distributes tobacco products as defined in section 39-5702(5), Idaho Code, and is subject to the terms and requirements of this chapter. If a permittee taking a delivery sale order also delivers the tobacco products without using a third party delivery service, the permittee shall comply with all the requirements of vendor assisted sales as defined in section 39-5702(16), Idaho Code.

History.
I.C., § 39-5717, as added by 2003, ch. 273, § 3, p. 728; am. 2012, ch. 39, § 10, p. 118.

STATUTORY NOTES

Amendments.
The 2012 amendment, by ch. 39, inserted "Tobacco products" in the section heading and substituted "39-5702(16), Idaho Code" for "39-5702(14), Idaho Code" near the end of the section.

39-5717A. Shipping requirements — Electronic cigarettes. — Each seller who mails or ships electronic cigarettes in connection with a delivery sale order shall include as part of the shipping documents a clear and conspicuous statement providing as follows:

"ELECTRONIC CIGARETTES: IDAHO LAW PROHIBITS SHIPPING TO INDIVIDUALS UNDER THE AGE OF EIGHTEEN YEARS. PERSONS VIOLATING THIS MAY BE CIVILLY LIABLE."

If a seller taking a delivery sale order also delivers the electronic cigarettes without using a third party delivery service, the seller shall comply with all the requirements of vendor assisted sales.

History.
I.C., § 39-5717A, as added by 2012, ch. 39, § 11, p. 118.

CHAPTER 59

IDAHO RURAL HEALTH CARE ACCESS PROGRAM

39-5902. Rural health care access and physician incentive funds. — (1) There is hereby created in the state treasury a fund known as the "Rural Health Care Access Fund." Subject to appropriation by the legislature, moneys in the fund shall be used exclusively for the purpose of grants for improving access to primary care medical services in areas designated as primary care health professional shortage areas and medically underserved areas and their administration pursuant to this chapter.

(2) There is hereby created in the state treasury a fund known as the "Rural Physician Incentive Fund." Money is payable into the fund as provided for in section 33-3723, Idaho Code. The moneys in the rural physician incentive fund are hereby appropriated for the uses of the fund. The state department of health and welfare may use the moneys in the fund to pay:

(a) The educational debts of rural physicians who practice primary care medicine in medically underserved areas of the state that demonstrate a need for assistance in physician recruitment; and

(b) The expenses of administering the rural physician incentive program. The expenses of administering the program shall not exceed ten percent (10%) of the annual fees assessed pursuant to section 33-3723, Idaho Code.

History.
I.C., § 39-5902, as added by 2000, ch. 262, § 2, p. 734; am. 2012, ch. 44, § 4, p. 132.

STATUTORY NOTES

Amendments.
The 2012 amendment, by ch. 44, substituted "access and physician incentive funds" for "access fund" in the section heading and added subsection (2).

Compiler's Notes.
The provisions in subsection (2) were derived from former §§ 33-3724 and 33-3725, which were repealed by S.L. 2012, ch. 44, §§ 2 and 3, effective July 1, 2012.

39-5903. Definitions. — As used in this chapter:

(1) "Applicant" means an entity submitting documents required by the department for the purpose of requesting a grant from the rural health care access and physician incentive program.

(2) "Application period" means the time period from July 1 to August 30 of the state fiscal year for which funding is requested.

(3) "Approval" means written notification that the application will be awarded funding through the rural health care access and physician incentive program.

(4) "Board" means the joint health care access and physician incentive grant review board.

(5) "Community sponsoring organization" means a hospital, medical clinic or other medical organization that is located in an eligible area and employs physicians for purposes of providing primary care medical services to patients.

(6) "Department" means the department of health and welfare.

(7) "Director" means the director of the department of health and welfare.

(8) "Eligible area for physician incentive grants" means a medically underserved area of Idaho, further defined to mean an area designated by the United States secretary of health and human services as a health professional shortage area.

(9) "Grant period" means the time immediately following the application period from July 1 through June 30 (state fiscal year) for which funding is granted.

(10) "Nurse practitioner" means a health care provider licensed pursuant to chapter 14, title 54, Idaho Code.

(11) "Oral health care provider" means a dentist or dental hygienist licensed pursuant to chapter 9, title 54, Idaho Code.

(12) "Physician assistant" means a health care provider licensed pursuant to chapter 18, title 54, Idaho Code.

(13) "Primary care," for purposes of rural health care access grants, means the provision of professional comprehensive health services, including oral health care services, that includes health education and disease prevention, initial assessment of health problems, treatment of acute care and chronic health problems, and the overall management of an individual's or family's health care services as provided by an Idaho licensed internist, obstetrician, gynecologist, pediatrician, family practitioner, general practitioner, dentist, dental hygienist, nurse practitioner or physician assistant. It provides the initial contact for health services and referral for secondary and tertiary care.

(14) "Primary care health professional shortage area" means a geographic area or population group which the U.S. secretary of health and human services has determined is underserved by primary care health professional(s).

(15) "Primary care medicine," for purposes of rural physician incentive grants, means family medicine, general internal medicine and general pediatrics. Provided however, if there is a demonstrated high level of need in an eligible area as determined by the board, it may also include obstetrics and gynecology, general psychiatry, general surgery and emergency medicine.

(16) "Medically underserved area" means a geographic area which the U.S. secretary of health and human services has determined is underserved by primary care health professional(s).

(17) "Qualified medical education debt" means a debt with a financial aid program or financial institution incurred to meet the educational costs of attending a medical school.

(18) "Rural health care access grant" means a grant awarded pursuant to this chapter.

(19) "Rural health care access and physician incentive program" means the program that administers the rural health care access and physician incentive funds.

(20) "Rural physician," for purposes of physician incentive grants, means a licensed Idaho physician, whether a medical doctor or doctor of osteopathic medicine, who spends a minimum of twenty-eight (28) hours per week, on average, providing primary care medicine services to patients in an eligible area.

(21) "Rural physician incentive fee" means the fee assessed by the state to students preparing to be physicians in the fields of medicine or osteopathic medicine who are supported by the state pursuant to an interstate compact for professional education in those fields, as those fields are defined by the compact.

(22) "Rural physician incentive fund" means the special revenue account in the state treasury created pursuant to section 39-5902, Idaho Code, relating to the rural health care access and physician incentive grant program.

History.

I.C., § 39-5903, as added by 2000, ch. 262, § 2, p. 734; am. 2002, ch. 354, § 1, p. 1010; am. 2007, ch. 199, § 2, p. 605; am. 2009, ch. 119, § 1, p. 382; am. 2012, ch. 44, § 5, p. 132.

STATUTORY NOTES

Amendments.

The 2012 amendment, by ch. 44, added subsections (5), (8), (15), (17), and (20) to (22), redesignating the existing subsections, as necessary; in subsection (1), substituted "department" for "rural health care access program" and "access and physician incentive program" for "access fund"; substituted "access and physician incentive program" for "access fund" in subsection (3); in subsection (4), inserted "joint" and substituted "access and physician incentive grant" for "access program"; in subsection (13), inserted "for purposes or rural health care access grants" near the beginning; and, in subsection (19), twice inserted "and physician incentive" and substituted "funds" for "fund" at the end.

39-5904. Joint health care access and physician incentive grant review board. — (1) The director shall appoint the members of a board to be known as the joint health care access and physician incentive grant review board, who shall serve at the pleasure of the director. Board members shall not be compensated, but shall be reimbursed for travel expenses incurred for attendance at board meetings.

(2) The board shall meet at least annually, for the purposes described in this chapter.

(3) The board shall be composed of the following: a representative from the Idaho academy of family physicians, a representative from the nurse practitioner conference group, a rural hospital administrator, a representative from the physician assistant association, a representative from the office of rural health, division of public health, a faculty member from one (1) of the Idaho family medicine residency programs, an Idaho medical association representative, an Idaho hospital association representative, an Idaho primary care association representative, an Idaho area health education center representative, a medical student program administrator represen-

tative from each state supported program, and an Idaho association of counties representative.

(4) Appointments to the board shall be for three (3) years. Board members may be reappointed at the end of each three (3) year period. Initial appointments shall be staggered in such a manner that approximately one-third (1/3) are appointed for one (1) year, one-third (1/3) are appointed for two (2) years, and one-third (1/3) are appointed for three (3) years.

(5) A majority of the board members constitutes a quorum for the transaction of business. A majority vote is required by the quorum in finalizing decisions.

History.
I.C., § 39-5904, as added by 2000, ch. 262, § 2, p. 734; am. 2007, ch. 199, § 3, p. 605; am. 2012, ch. 44, § 6, p. 132.

STATUTORY NOTES

Amendments.
The 2012 amendment, by ch. 44, substituted "joint health care access and physician incentive" for "health care access" in the section heading and subsection (1); and, in subsection (3), substituted "a representative from the office of rural health, division of public health" for "the health resource supervisor from the division of health", and inserted "an Idaho area health education center representative, a medical student program administrator representative from each state supported program" near the end.

39-5905. Scope of rural health care access and physician incentive grant support. — The board may award grants, in accordance with the procedures and criteria in this chapter, to governmental and nonprofit entities and to physicians for qualified medical education debt repayments for the purpose of improving access to primary health care services to rural and underserved areas and for physician loan repayment.

(1) Rural health care access grant awards:

(a) Individual grant awards will be limited to a total of thirty-five thousand dollars ($35,000), direct and indirect costs, per year.

(b) Applicants may propose projects for funding for up to three (3) years.

(i) Continued funding for projects beyond the first grant year, years two (2) and three (3), shall be subject to the appropriation of funds and grantee performance.

(ii) No project may be funded for more than a total of three (3) years.

(iii) Any unused grant funds shall be returned to the rural health care access fund by the applicant no later than June 1 of the grant period.

(c) No funds awarded under a grant may be used for purchase, construction, renovation or improvement of real property or for projects which are solely or predominantly designed for the purchase of equipment. Use of funds for the purchase of equipment may be allowed when such equipment is an essential component of a program. However, the purchase of equipment may not represent more than forty percent (40%) of the total annual share of a proposal. Indirect costs shall not exceed fifteen percent (15%) of the total project.

(2) Physician incentive grant awards:

(a) A physician selected to receive a rural physician incentive grant award shall be entitled to receive qualified medical education debt

repayments for a period not to exceed four (4) years in such amount as is determined annually.

(b) Award amounts shall be established annually based on recommendations of the joint health care access and physician incentive grant review board utilizing such factors as availability of funding, the number of new applicants and the hours an award recipient will devote to providing primary care medicine in an eligible area.

(c) The award shall not exceed the qualified medical education debt incurred by the recipient, and the maximum amount of educational debt repayments that a rural physician may receive shall be fifty thousand dollars ($50,000) over such four (4) year period.

(d) All physician incentive grant awards shall be paid directly from the physician incentive fund to the physician receiving the award.

(e) The total of all awards from the rural physician incentive fund contractually committed in a year shall not exceed the annual amount deposited in the fund that same year.

(f) An award payment to a recipient in a single year is not guaranteed or assured in subsequent years and may be increased or reduced.

(g) Any unused grant funds shall be returned to the physician incentive fund by the applicant no later than June 1 of the grant period.

History.

I.C., § 39-5905, as added by 2000, ch. 262, § 2, p. 734; am. 2009, ch. 119, § 2, p. 382; am. 2012, ch. 44, § 7, p. 132.

STATUTORY NOTES

Amendments.

The 2012 amendment, by ch. 44, inserted "rural health care access and physician incentive" in the section heading; in the introductory paragraph, inserted "and to physicians for qualified medical education debt repayments" and "and for physician loan repayment"; inserted the introductory paragraph in subsection (1) and redesignated the subordinate parts thereof; substituted "June 1" for "August 30" in paragraph (1)(b)(iii); and added subsection (2).

39-5906. Categories of rural health care access and physician incentive grants. — (1) There are three (3) categories of rural health care access grant assistance:

(a) Telehealth projects — Grant funds may be used for projects that involve the use of telecommunications technologies for distance learning and for projects to improve access to care for rural communities.

(b) Community development projects — Grant funds may be used for health needs assessments, marketplace analysis, financial analysis and strategic planning activities.

(c) Other — Communities may choose to apply for funds for activities that they have identified and determined will help to improve access to primary care in rural areas, including loan repayment for primary care providers, recruitment incentive, and/or reimbursement of relocation expenses for primary care providers.

(2) Physician incentive grants: Grants are limited to loan repayment for physicians providing primary care medicine in eligible areas.

History.
I.C., § 39-5906, as added by 2000, ch. 262, § 2, p. 734; am. 2012, ch. 44, § 8, p. 132.

STATUTORY NOTES

Amendments.
The 2012 amendment, by ch. 44, inserted "rural health care access and physician incentive" in the section heading; rewrote the former introductory language which read: "There are four (4) categories of grant assistance" and designated that paragraph as subsection (1); deleted former subsection (1), which read: "Recruitment and retention of primary care providers — Grant funds may be used for loan repayment for primary care providers, recruitment incentive, and/or reimbursement of relocation expenses for primary care providers"; redesignated former subsections (2) through (4) as paragraphs (a) through (c); inserted "including load repayment for primary care providers, recruitment incentive, and/or reimbursement of relocation expenses for primary care providers" at the end of paragraph (c); and added subsection (2).

39-5907. Eligibility for grants. — Applicants must meet the following requirements:

(1) Rural health care access grant awards:

(a) The geographical area to be benefitted must be located in a current primary care or dental health professional shortage area or a medically underserved area.

(b) The applicant must be a governmental entity or a nonprofit entity registered with the Idaho secretary of state.

(2) Rural physician incentive grant awards:

(a) A physician who meets the following requirements is eligible to apply for a rural physician incentive grant award:

(i) During the period covered by the award, the physician must be a rural physician providing primary care medicine in an eligible area. A physician may provide patient care services in primary care medicine in more than one (1) eligible area;

(ii) The physician must be a doctor of medicine or doctor of osteopathic medicine and have completed an accreditation council of graduate medical education or American osteopathic association residency;

(iii) The physician must be Idaho medical board certified/board eligible, be eligible for an unrestricted Idaho medical license and be able to meet the medical staffing requirements of the sponsoring organization when applicable; and

(iv) The physician must accept medicare and medicaid patients within the capacity of his or her primary care medicine practice.

(b) Physicians who have paid the fee authorized in section 33-3723, Idaho Code, shall be given a preference over other applicants.

(c) A physician shall not be entitled to receive an award under this program if the physician is receiving payments for purposes of repaying qualified medical education debt from another state or from a federal debt repayment program.

History.
I.C., § 39-5907, as added by 2000, ch. 262, § 2, p. 734; am. 2012, ch. 44, § 9, p. 132.

STATUTORY NOTES

Amendments.
The 2012 amendment, by ch. 44, added the introductory paragraph in subsection (1) and redesignated the subordinate parts thereof; and added subsection (2).

39-5908. Rural health care access and physician incentive applications required. — (1) A completed grant application must be submitted by the applicant for the purpose of requesting a grant or contract, on or before the conclusion of the application period specified for the appropriate grant cycle. All applications must include the required information.

(2) The grant application and any attachments submitted by the applicant shall be the primary source of information for awarding a grant. Additionally, the board may request and/or use other information known to it in making its decision.

(3) All rural health care access applications shall include:

(a) Geographical area of need;

(b) Individual or entity requesting funds;

(c) Narrative description of the methods to be used to address needs and demonstrate the potential of the project to improve access to health care services in the community;

(d) Identification of measurable goals, objectives to be used to reach the goals, and the resources necessary to complete each activity;

(e) Estimation of how long it will take to accomplish the individual activities of the project;

(f) Demonstrated community and organizational support for the project;

(g) County or local governmental endorsement;

(h) Operating budget including:

(i) Proportion of operating budget, if any, the applicant proposes to match with the rural health care access grant funds;

(ii) Documentation of one (1) or more vendor price quotes for all proposed equipment purchases;

(iii) Contact person for verification of fiscal information;

(i) Federal tax identification number; and

(j) Other information required by the board.

(4) All rural physician incentive applications shall:

(a) Be on a form prescribed by the rural health care access and physician incentive board; and

(b) Include a letter of support along with supporting documentation.

History.
I.C., § 39-5908, as added by 2000, ch. 262, § 2, p. 734; am. 2012, ch. 44, § 10, p. 132.

STATUTORY NOTES

Amendments.
The 2012 amendment, by ch. 44, rewrote the section heading, which formerly read: "Application required"; in subsection (1), deleted "rural health care access" following "A complete" and inserted "or contract" in the first sentence and added the second sentence; added subsection (2) and redesignated former subsections (2) and (3) as present subsections (3) and (4); substituted "All rural health care

access applications" for "Each application" in the introductory paragraph in subsection (3); and rewrote subsection (4), which formerly read: "All applications must include the required information"; and deleted former subsection (4), which read: "The grant application and any attachments submitted by the applicant shall be the primary source of information for awarding a grant. Additionally, the board may request and/or use other information known to them in making their decision."

39-5909. Rural health care access and physician incentive grant award schedule. — The board shall conduct the grant process in accordance with the following schedule:

(1) The rural health care access and physician incentive program manager will generate, and make available, a list of areas eligible for potential grant assistance no later than May 1 prior to the application period.

(2) The rural health care access and physician incentive program manager shall develop an application form and make guidance available no later than July 1 which shall initiate the application period prior to the grant period.

(3) The completed application shall be submitted no later than August 30 of the application period.

(4) The board shall issue notification to every applicant regarding the disposition of their grant request by October 30 prior to the grant period.

(5) Funds for approved rural health care access grants shall be disbursed during November of that grant period or over the course of the current grant year as funds become available.

(6) Funds for approved rural physician incentive grants shall be disbursed upon completion of six (6) months of service in an eligible area during the initial grant period and annually thereafter upon completion of a twelve (12) month term of service in an eligible area.

History.
I.C., § 39-5909, as added by 2000, ch. 262, § 2, p. 734; am. 2002, ch. 354, § 2, p. 354; am. 2009, ch. 119, § 3, p. 382; am. 2012, ch. 44, § 11, p. 132.

STATUTORY NOTES

Amendments.
The 2012 amendment, by ch. 44, added "Rural health care access and physician incentive" to the beginning of the section heading; substituted "and physician incentive program manager" for "director" in subsections (1) and (2); inserted "rural health care access" in subsection (5); and added subsection (6).

39-5910. Rural health care access and physician incentive award criteria. — (1) Rural health care access awards shall be made by the board based on the following weighted criteria:

(a) Background of bidding organization. The applicant must show adequate experience, knowledge, and qualifications to adequately perform the scope of work: weight = 10%;

(b) Community and organizational support. The applicant must demonstrate community and organizational support for the project: weight = 15%;

(c) Specificity and clarity of scope of project. The proposal will be evaluated based on the extent to which the goals and objectives are specific, measurable, and relevant to the purpose of the proposal and the

activities planned to accomplish those objectives are germane and can be sustained beyond the grant time frame. Additionally, there must be a demonstrated need for and lack of availability of funds from other sources to address the primary health care needs of the defined area of service: weight = 35%;

(d) Monitoring and evaluation. The proposal will be evaluated based on the extent to which the monitoring and evaluation system will document program or activity progress and measure effectiveness: weight = 15%;

(e) Budget. The proposal will be evaluated based on the extent to which a detailed itemized budget and justification are consistent with stated objectives and planned program activities: weight = 25%.

(2) Physician incentive awards shall be made by the board based on ranking and priority of applicants in accordance with the following criteria:

(a)(i) Priority selection for physicians who were Idaho resident students and were assessed the rural physician incentive fee and paid into the fund, followed by physicians who were Idaho residents prior to completing medical school out of state and who did not contribute to the fund, followed by physicians from other states who were not Idaho residents;

(ii) Demonstrated physician shortage in the eligible area to be benefitted;

(iii) Demonstrated physician recruiting difficulties in the eligible area to be benefitted;

(iv) Support of the medical community and community leaders in the eligible area.

(b) In reviewing and weighing criteria, all relevant factors shall be considered.

(c) If a physician selected for an award of debt payments does not accept the award in the manner provided pursuant to the provisions of this chapter, then the award shall be awarded to the next eligible applicant who has not received an award.

(d) The physician is liable for the payments if the physician ceases to practice in the eligible area during the contract period.

History.

I.C., § 39-5910, as added by 2000, ch. 262, § 2, p. 734; am. 2012, ch. 44, § 12, p. 132.

STATUTORY NOTES

Amendments.

The 2012 amendment, by ch. 44, added "Rural health care access and physician incentive" to the beginning of the section heading; added the subsection (1) designation to the introductory paragraph and redesignated the subordinate parts thereof; substituted "Rural health care access awards shall be made by the board" for "The board shall awards grants" at the beginning of subsection (1); and added subsection (2).

39-5911. Negotiation. [Repealed.]

Repealed by S.L. 2012, ch. 44, § 13, effective July 1, 2012.

History.
I.C., § 39-5911, as added by 2000, ch. 262, § 2, p. 734.

39-5912. Fraudulent information on grant application. — Providing false information on any application or document submitted under this statute is a misdemeanor and grounds for declaring the applicant ineligible. Any and all funds determined to have been acquired on the basis of fraudulent information must be returned to the rural health care access and physician incentive grant program. This section shall not limit other remedies which may be available for the filing of false or fraudulent applications.

History.
I.C., § 39-5912, as added by 2000, ch. 262, § 2, p. 734; am. 2012, ch. 44, § 14, p. 132.

STATUTORY NOTES

Amendments.
The 2012 amendment, by ch. 44, substituted "access and physician incentive grant program" for "access fund" at the end of the second sentence.

CHAPTER 63

DOMESTIC VIOLENCE CRIME PREVENTION

SECTION.

39-6311. Order — Transmittal to law enforcement agency — Record in Idaho public safety and security information system — Enforceability. — (1) The orders issued under sections 39-6306 and 39-6308, Idaho Code, or foreign protection orders recognized under section 39-6306A, Idaho Code, shall be in a form approved by the supreme court of the state of Idaho.

(2)(a) A copy of a protection order granted or a foreign protection order recognized under this chapter shall be forwarded by the clerk of the court on or before the next judicial day to the appropriate law enforcement agency specified in the order.

(b) Upon receipt of the order, the law enforcement agency shall forthwith enter the order and its expiration date into the Idaho public safety and security information system available in this state used by law enforcement agencies to list outstanding warrants. Notification of service as required in section 39-6310, Idaho Code, shall also be entered into the Idaho public safety and security information system upon receipt. Entry into the Idaho public safety and security information system constitutes notice to all law enforcement agencies of the existence of the order. The order is fully enforceable in any county in the state. Renewals of the order shall be recorded in the same manner as original orders. The information entered shall specifically state that the protection order is civil in nature.

If the appropriate law enforcement agency determines that the service information sheet is incomplete or cannot be entered into the Idaho public safety and security information system upon receipt, the service information sheet shall be returned to the clerk of the court. The clerk of the court shall then notify the petitioner of the error or omission.

(3) Law enforcement agencies shall establish procedures reasonably adequate to assure that an officer approaching or actually at the scene of an incident of domestic violence may be informed of the existence and terms of such protection order.

(4) A protection order shall remain in effect for the term set by the court or until terminated by the court. A protection order may, upon motion and upon good cause shown, be renewed for additional terms not to exceed one (1) year each if the requirements of this chapter are met. The motion to renew an order may be granted without a hearing, if not timely objected to by the party against whom the order was entered. If the petitioner voluntarily and without duress consents to the waiver of any portion of the protection order vis-a-vis the respondent pursuant to section 39-6313, Idaho Code, the order may be modified by the court.

History.

I.C., § 39-6311, as added by 1988, ch. 341, § 1, p. 1013; am. 1989, ch. 136, § 6, p. 305; am. 1990, ch. 293, § 1, p. 813; am. 1991, ch. 300, § 2, p. 787; am. 1995, ch. 357, § 2, p. 1212; am. 1996, ch. 362, § 1, p. 1218; am. 1999, ch. 330, § 6, p. 388; am. 2002, ch. 213, § 6, p. 587; am. 2013, ch. 187, § 6, p. 447.

STATUTORY NOTES

Cross References.

Idaho public safety and security information system, § 19-5201 et seq.

Amendments.

The 2013 amendment, by ch. 187, substituted "Idaho public safety and security information system" for "Idaho law enforcement telecommunications system" in the section heading and throughout the section.

CHAPTER 71

HAZARDOUS SUBSTANCE EMERGENCY RESPONSE ACT

SECTION.

39-7114A. Civil air patrol. — (1) There is hereby established within the military division and the bureau of homeland security the Idaho directorate of civil air patrol. The mission of the directorate shall be to provide support for and facilitate the operation of the civil air patrol, Idaho wing, which shall be under the command and control of the duly appointed commanding officer of such wing.

(2) In consideration for services rendered to the state of Idaho by the directorate of civil air patrol, Idaho wing, the military division shall provide in-kind services to the directorate in the form of land use, hanger facilities, mess and billeting facilities, office space and other entities when deemed necessary and when such facilities are available.

History.
I.C., § 39-7114A, as added by 2012, ch. 313, § 1, p. 862.

CHAPTER 75

ADOPTION AND MEDICAL ASSISTANCE

SECTION.

39-7504. Financial responsibility of parents of estate. — The compact administrator shall take appropriate action pursuant to existing law to effect the recovery from relevant parents of estate, at the option of said administrator, of any and all costs expended by the state, or any of its subdivisions, with respect to Idaho children handled under said compact.

History.
I.C., § 39-7504, as added by 1994, ch. 69, § 1, p. 141; am. 2012, ch. 257, § 11, p. 709.

STATUTORY NOTES

Amendments.
The 2012 amendment, by ch. 257, deleted "and guardians" and "or guardians" following "parents" in the section heading and in the text.

CHAPTER 80

UNIFORM PUBLIC SCHOOL BUILDING SAFETY

SECTION.

39-8006A. Best practices maintenance plan for school buildings. — The administrator of the division of building safety and the state department of education shall consult and shall draft a best practices maintenance plan for school buildings which shall be supplied to the superintendent of each school district. Based on the best practices maintenance plan, each school district shall develop a ten (10) year plan and submit it to the division of building safety for approval. Such plan shall be submitted in all years ending in zero (0) or five (5), and shall include information detailing the work completed pursuant to the previous maintenance plan and any revisions to that plan.

History.
I.C., § 39-8006A, as added by 2006, ch. 311, § 9, p. 957; am. 2012, ch. 66, § 2, p. 188.

STATUTORY NOTES

Amendments.

The 2012 amendment, by ch. 66, substituted "division of building safety" for "state department of education" near the end of the second sentence; and, in the third sentence, substituted "Such plan shall be submitted in all years ending in zero (0) or five (5), and shall include information" for "Annually thereafter, the school district shall submit a report to the state department of education" and inserted "previous" preceding "maintenance."

CHAPTER 84

TOBACCO MASTER SETTLEMENT AGREEMENT COMPLEMENTARY ACT

39-8408 — 39-8419. [Reserved.]

39-8420. Legislative findings and intent. — (1) The legislature finds that the commercial use of cigarette rolling machines in this state has the potential to circumvent various requirements under Idaho law related to the manufacturing, marketing, sale and taxation of cigarettes. Such use is to the detriment of the fiscal soundness of the state and the public health.

(2) This legislation is intended to ensure that cigarette rolling machine operators comply with applicable Idaho laws governing the manufacturing, marketing, sale and taxation of cigarettes and that the use of such cigarette rolling machines will not circumvent these laws and undercut the purposes for which they were enacted.

History.

I.C., § 39-8420, as added by 2012, ch. 206, § 1, p. 548.

39-8421. Definitions. — As used in sections 39-8420 through 39-8425, Idaho Code:

(1) The definitions set forth in section 39-8402, Idaho Code, of the Idaho tobacco master settlement agreement complementary act, and in this section, apply to sections 39-8420 through 39-8425, Idaho Code.

(2) "Cigarette rolling machine" means any machine or device that has the capability to produce at least one hundred fifty (150) cigarettes in less than thirty (30) minutes.

(3) "Cigarette rolling machine operator" means any person who owns or leases or otherwise has available for use a cigarette rolling machine and makes such a machine available for use by another person in a commercial setting in order to manufacture a cigarette. No person shall be deemed a cigarette rolling machine operator based solely upon that person's manufacture, sale, enabling, disabling, or repair of a cigarette rolling machine.

(4) "Minor" has the same meaning as that term is defined in section 39-5702(6), Idaho Code, of the Idaho prevention of minors' access to tobacco act.

(5) "Person" means natural persons, corporations both foreign and domestic, trusts, partnerships both limited and general, incorporated or unincorporated associations, companies, business entities, and any other legal entity, or any other group associated in fact although not a legal entity.

(6) "Tobacco products" has the same meaning as that term is defined in section 39-5702(13), Idaho Code, of the Idaho prevention of minors' access to tobacco act.

History.
I.C., § 39-8421, as added by 2012, ch. 206, § 2, p. 548.

39-8422. Certification of cigarette rolling machine operators. — A cigarette rolling machine operator may not locate at, offer, or make a cigarette rolling machine available for use, or offer for sale cigarettes manufactured by the operator or any other person at the location of the operator's cigarette rolling machine, until the operator has first been certified by the attorney general upon a form prescribed by the attorney general. The attorney general shall annually certify a cigarette rolling machine operator, but only after he has obtained adequate certification from the operator, as set forth in section 39-8423, Idaho Code, and has been provided by the operator sufficient information identifying the operator, the location, the make and brand of the operator's cigarette rolling machine, and the person(s) from whom the operator will purchase its tobacco for purposes of the operator's cigarette rolling machine's manufacturing of cigarettes.

History.
I.C., § 39-8422, as added by 2012, ch. 206, § 3, p. 548.

39-8423. Requirements for certification. — (1) Before a cigarette rolling machine operator may be certified by the attorney general, the operator shall certify, under penalty of perjury, that:

(a) All tobacco to be used in the operator's cigarette rolling machine, regardless of the tobacco's label or description thereof, will only be of a brand family and of a tobacco product manufacturer listed on the directory maintained by the attorney general pursuant to section 39-8403, Idaho Code, of the Idaho tobacco master settlement agreement complementary act;

(b) All applicable state tobacco taxes have been paid, as required by the cigarette and tobacco products tax act, chapter 25, title 63, Idaho Code, for the tobacco to be used in the operator's cigarette rolling machine;

(c) The operator has obtained, and has a current permit issued, pursuant to section 39-5704, Idaho Code, of the Idaho prevention of minors' access to tobacco act;

(d) All cigarette tubes used in the operator's cigarette rolling machine

shall be constructed of paper of a type determined by the attorney general, pursuant to regulations to be promulgated by the attorney general, to reduce the likely ignition propensity of cigarettes to be made with such tubes;

(e)(i) At any location where the operator has a cigarette rolling machine, seventy-five percent (75%) of the revenues of the operator's total merchandise sales at that location are comprised of tobacco products, or

(ii) The location where the cigarette rolling machine is situated prohibits minors from entering the premises;

(f) The operator will not sell cigarettes or make a cigarette rolling machine available for use, in any quantity less than twenty (20) cigarettes per transaction, except for samples prepared in connection with the purchase or prospective purchase of tobacco and consumed or destroyed at the premises where the cigarette rolling machine is located; and

(g) The operator will not accept or allow its cigarette rolling machine to be used to manufacture cigarettes with tobacco that was not first purchased or obtained from the operator and for which the operator will timely and properly report to the attorney general as set forth in subsection (2) of this section.

(2) After being certified, the cigarette rolling machine operator shall annually certify, under penalty of perjury, to the provisions set forth in subsection (1) of this section. Additionally, the operator shall quarterly report to the attorney general on a form prescribed by the attorney general:

(a) The number of cigarettes that the operator's cigarette rolling machine manufactured during that quarter;

(b) The brand families, the tobacco product manufacturer of each brand family, and the ounces of tobacco of each such brand family that were used in the operator's cigarette rolling machine to manufacture cigarettes during the quarter; and

(c) The person or persons from whom the operator purchased or obtained the tobacco that the operator's machine used to manufacture cigarettes.

(3) The cigarette rolling machine operator's annual certification shall be due to the attorney general no later than the thirtieth day of April each year.

(4) All tobacco certified under subsection (1)(a) of this section shall be deemed to be "roll-your-own" tobacco for purposes of section 39-7802(d), Idaho Code, of the Idaho tobacco master settlement agreement act.

(5) A cigarette rolling machine operator shall not be required to comply with the provisions of section 39-8423(1)(d), Idaho Code, [subsection (1)(d) of this section] until the attorney general has promulgated rules implementing this subsection, pursuant to section 39-8425, Idaho Code, and the effective date provided for such rules has passed.

History.

I.C., § 39-8423, as added by 2012, ch. 206, § 4, p. 548.

STATUTORY NOTES

Compiler's Notes.
The bracketed insertion in subsection (5) was added by the compiler to clarify the reference.

39-8424. Violations — Attorney general and district court authority — Revocation of certification. — (1) Any person who violates any provision of this act, or any certification provided by the attorney general, is subject to the imposition of a civil penalty by the district court in the amount set forth in section 39-8406(1), Idaho Code. The attorney general and the district courts shall have the same authority in enforcing and carrying out the provisions of this section as is granted the attorney general and district courts under sections 39-8406 and 39-8407, Idaho Code, of the Idaho tobacco master settlement agreement complementary act.

(2) In addition to the authority set forth in subsection (1) of this section:

(a) The district court shall have the authority to revoke the cigarette rolling machine operator's tobacco permit issued by the department of health and welfare, pursuant to the Idaho prevention of minors' access to tobacco act, for a period of at least three (3) months but up to one (1) year.

(b)(i) The attorney general may suspend or revoke a cigarette rolling machine operator's certification for violation of any provisions of this act or the operator's certification or any rule adopted by the attorney general pursuant to this act.

(ii) A determination by the attorney general to deny a certification application or to suspend or revoke a cigarette rolling machine operator's certification shall be subject to review in the manner prescribed by Idaho's administrative procedure act, chapter 52, title 67, Idaho Code. In instances where a certification is suspended or revoked, the cigarette rolling machine operator may not thereafter use or make the machine available for use and shall have ten (10) days after receiving actual notice that its certification has been suspended or revoked to remove the machine from the operator's commercial premises. If the operator fails to remove the cigarette rolling machine within this time period, the machine shall be deemed contraband and subject to seizure and forfeiture. During the period in which the operator's certification has been suspended or revoked, the operator may store the machine at a storage site so long as the machine is not used by or available to persons for use to manufacture cigarettes.

(3) No person who manufactures a cigarette using a cigarette rolling machine shall sell or offer that cigarette for sale in this state. This prohibition shall not apply to any person holding a federal license as a cigarette manufacturer.

(4) Unless expressly provided, the remedies or penalties provided by this act are cumulative to each other and to the remedies or penalties available under all other laws of this state.

History.
I.C., § 39-8424, as added by 2012, ch. 206, § 5, p. 548.

STATUTORY NOTES

Compiler's Notes.
The term "this act" near the beginning of subsection (1) refers to S.L. 2012, ch. 206, which is codified as §§ 39-8420 to 39-8425.

39-8425. Rulemaking. — The attorney general may adopt rules to implement this act. With respect to section 39-8423(1)(d), Idaho Code, the attorney general shall adopt rules with an effective date that is no earlier than July 1, 2013. In adopting rules implementing subsection 39-8423(1)(d), Idaho Code, the attorney general may provide for an effective date that is later than July 2, 2013, if, in his discretion, such later effective date is warranted.

History.
I.C., § 39-8425, as added by 2012, ch. 206, § 6, p. 548.

CHAPTER 86

IDAHO ELEVATOR SAFETY CODE ACT

SECTION.

39-8606. Scope — Exemptions. — (a) The provisions of this chapter shall apply to all conveyances within the state of Idaho except the following or as provided in subsection (b) of this section:

(1) Conveyances located in private residences;

(2) Conveyances in federally owned facilities;

(3) Conveyances permanently removed from service or made effectively inoperative; and

(4) Conveyances erected temporarily for use only during construction work that are of such a design that they must be operated by a workman stationed at the hoisting machine.

(b) Conveyances erected before July 1, 2004, pursuant to section 39-8614(3), Idaho Code, are subject only to the requirements of the safety code for existing elevators and escalators (ASME A17.3). Such conveyances, however, shall also be exempted from any requirements of that ASME A17.3 requiring conveyances to be modified with upgrades or replacements that would fall within the definition of "modernization" as defined in section 39-8603, Idaho Code, or to be modified with additional safety features falling within the definition of "alteration" unless:

(1) The total cost of the modification is less than five thousand dollars ($5,000); or

(2) The conveyance is not situated in a privately owned business facility; or

(3) The facility in which the conveyance is located is being altered, as defined within the provisions and guidelines applicable to the Americans with disabilities act of 1990 and amendments thereto, provided that said alterations are significant in that they affect the accessibility of the majority of floor space on at least one (1) floor of the building.

History.

I.C., § 39-8606, as added by 2004, ch. 359, § 1, p. 1067; am. 2012, ch. 42, § 1, p. 130.

STATUTORY NOTES

Amendments.

The 2012 amendment, by ch. 42, added the subsection (a) designation to the existing provisions; inserted "or as provided in subsection (b) of this section" at the end of the introductory paragraph in subsection (a); and added subsection (b).

Effective Dates.

Section 2 of S.L. 2012, ch. 42, declared an emergency. Approved March 6, 2012.

TITLE 40

HIGHWAYS AND BRIDGES

CHAPTER 1

DEFINITIONS

40-102. Definitions — A. —

(1)(a) "Access easement" also commonly and sometimes legally referred to as a "deeded access" means a property right running with the land and appurtenant thereto for purposes of vehicular ingress and egress at a designated location from private property to the public highway or public right-of-way created by a written document, contract or deed by exception between the state or any political subdivision of the state of Idaho and the landowner. If the easement does not specify the type of use which may be made of the easement, for example, farm access, heavy industrial, etc., the easement is not limited to any type(s) of access.

(b) If the governmental entity with jurisdiction over the road that the property has a "deeded access" to denies the property owner the right to use the easement, the denial shall constitute a taking of the access right for which just compensation shall be owed.

(2) "Activities, commercial or industrial." (See "Unzoned commercial or industrial areas," section 40-122, Idaho Code)

(3) "Advertising business, outdoor." (See "Outdoor advertising business," section 40-116, Idaho Code)

(4) "Advertising display" means advertising structures and signs.

(5) "Advertising structure(s)" or "structure(s)" or "sign(s)" means any thing designed, intended or used to advertise or inform. "Advertising structure" or "sign" does not include:

(a) Official notices issued by any court or public body or officer.

(b) Notices posted by any public officer in performance of a public duty or by any person in giving legal notice.

(c) Directional, warning or information structures required by or authorized by law, informational or directional signs regarding telephone service, emergency telephone signs, buried or underground cable markers and above cable closures.

(d) An official or public structure erected near a city or county, and within its territorial or zoning jurisdiction, which contains the name of the city or county, provided the same is maintained wholly at public expense. Where a city has been bypassed, but remains within five (5) miles of an interstate highway or primary freeway, the Idaho transportation board, in its discretion, may grant the city the right to erect and maintain a billboard displaying the name of the city at a location not to exceed one (1) mile from an interchange primarily serving that city. Billboards erected must be at locations consistent with department regulations and safety standards.

(6) "Agency," as applied to highway relocation assistance as provided by chapter 20, title 40, Idaho Code, means any subdivision or entity of state or local government in the state of Idaho authorized by law to engage in any highway program or perform any highway project in which the acquisition of real property may result in the displacement of any person.

(7) "Alternate technical concept (ATC)" means an alternative to the base technical concept that promotes innovation and is equal or better in quality or effect, as determined by the department in its sole discretion.

(8) "Areas, commercial or industrial, unzoned." (See "Unzoned commercial or industrial areas," section 40-122, Idaho Code)

(9) "Areas, urban." (See "Urban areas," section 40-122, Idaho Code)

(10) "Automobile graveyard" means any establishment or place of business which is maintained, used, or operated, for storing, keeping, buying, or selling wrecked, scrapped, ruined, or dismantled motor vehicles or motor vehicle parts.

(11) "Average annual net earnings," for the purposes of section 40-2004, Idaho Code, means one-half (1/2) of any net earnings of the business or farm operations, before federal, state and local income taxes, during the two (2) taxable years immediately preceding the taxable year in which the business or farm operation moves from the real property acquired for the project, or during any other period as the agency determines to be more equitable for establishing the earnings, and includes any compensation paid by the business or farm operation to the owner, his spouse, or his dependents during the two (2) year period, or any other period as determined by the agency.

History.
I.C., § 40-102, as added by 1985, ch. 253, § 2, p. 586; am. 2010, ch. 293, § 1, p. 777; am. 2012, ch. 323, § 1, p. 882.

STATUTORY NOTES

Amendments.
The 2012 amendment, by ch. 323, added subsection (1) and renumbered the subsequent subsections accordingly.

Effective Dates.
Section 2 of S.L. 2012, ch. 323 declared an emergency. Approved April 5, 2012.

40-114. Definitions — M. — (1) "Main traveled way" means the portion of a roadway for the movement of vehicles, exclusive of shoulders.

(2) "Maintain" or "place" means to allow to exist, subject to the provisions of chapter 19, title 40, Idaho Code.

(3) "Maintenance" means to preserve from failure or decline, or repair,

refurbish, repaint or otherwise keep an existing highway or public right-of-way in a suitable state for use including, without limitation, snow removal, sweeping, litter control, weed abatement and placement or repair of public safety signage.

(4) "Mortgage" means a class of liens, including deeds of trust, as are commonly given to secure advances on, or the unpaid purchase price of, real property under the laws of the state of Idaho, together with the credit instruments, if any, secured by it.

History.

I.C., § 40-114, as added by 1985, ch. 253, § 2, p. 586; am. 2013, ch. 239, § 2, p. 560.

STATUTORY NOTES

Amendments.

The 2013 amendment, by ch. 239, substituted "public right-of-way in a suitable state for use including, without limitation, snow removal, sweeping, litter control, weed abatement and placement or repair of public safety signage" for "structure in a suitable state for use" in subsection (3).

Legislative Intent.

Section 1 of S.L. 2013, ch. 239 provides: "Legislative Intent. It is the intent of the Legislature to address right-of-way issues brought forward during the testimony and discussion before the Senate Transportation Committee in the 2012 legislative session relating to House Bill No. 628, as amended. During the 2012 interim session, the President Pro Tempore of the Senate and the Speaker of the House of Representatives established an Interim Task Force encompassing members of the Idaho Senate and the House of Representatives to further study these issues. On October 1, 2012, the Right-of-Way Task Force convened and accepted extensive testimony from stakeholders that included representatives of utility companies, counties and highway districts, irrigation districts and canal companies and various members of the public. It is further the intent of the Legislature to protect private property rights and ensure adequate public rights-of-way for transportation, utility and irrigation and other public facilities. It is the intent of the Legislature that this act shall apply to any and all existing and future highways and public rights-of-way and provide for an immediate implementation date due to the year delay in passing needed legislation, as a result of the yearlong task force efforts and the immediate need to provide clarity regarding the status or abandonment of highways and public rights-of-way."

Effective Dates.

Section 7 of S.L. 2013, ch. 239 declared an emergency. Approved April 2, 2013.

CHAPTER 2

GENERAL PROVISIONS

40-202. Designation of highways and public rights-of-way. — (1) The initial selection of the county highway system and highway district system may be accomplished in the following manner:

(a) The board of county or highway district commissioners shall cause a map to be prepared showing the general location of each highway and public right-of-way in its jurisdiction, and the commissioners shall cause

notice to be given of intention to adopt the map as the official map of that system, and shall specify the time and place at which all interested persons may be heard.

(b) After the hearing, the commissioners shall adopt the map, with any changes or revisions considered by them to be advisable in the public interest, as the official map of the respective highway system.

(2) If a county or highway district acquires an interest in real property for highway or public right-of-way purposes, the respective commissioners shall:

(a) Cause any order or resolution enacted, and deed or other document establishing an interest in the property for their highway system purposes to be recorded in the county records; or

(b) Cause the official map of the county or highway district system to be amended as affected by the acceptance of the highway or public right-of-way.

Provided, however, a county with highway jurisdiction or highway district may hold title to an interest in real property for public right-of-way purposes without incurring an obligation to construct or maintain a highway within the right-of-way until the county or highway district determines that the necessities of public travel justify opening a highway within the right-of-way. The lack of an opening shall not constitute an abandonment, and mere use by the public shall not constitute an opening of the public right-of-way.

(3) Highways laid out, recorded and opened as described in subsection (2) of this section, by order of a board of commissioners, and all highways used for a period of five (5) years, provided they shall have been worked and kept up at the expense of the public, or located and recorded by order of a board of commissioners, are highways. If a highway created in accordance with the provisions of this subsection is not opened as described in subsection (2) of this section, there shall be no duty to maintain that highway, nor shall there be any liability for any injury or damage for failure to maintain it or any highway signs, until the highway is designated as a part of the county or highway district system and opened to public travel as a highway.

(4) When a public right-of-way is created in accordance with the provisions of subsection (2) of this section, or section 40-203 or 40-203A, Idaho Code, there shall be no duty to maintain that public right-of-way, nor shall there be any liability for any injury or damage for failure to maintain it or any highway signs.

(5) Nothing in this section shall limit the power of any board of commissioners to subsequently include or exclude any highway or public right-of-way from the county or highway district system.

(6) By July 1, 2005, and at least every five (5) years thereafter, the board of county or highway district commissioners shall publish in map form and make readily available a map showing the general location of all highways and public rights-of-way under its jurisdiction. Any board of county or highway district commissioners may be granted an extension of time with approval of the legislature by adoption of a concurrent resolution.

(7) Prior to designating a new highway or public right-of-way on the official map, the board of county or highway district commissioners shall

confirm that no legal abandonment has occurred on the new highway or right-of-way to be added to the official map. In addition, the board of county or highway district commissioners shall have some basis indicating dedication, purchase, prescriptive use or other means for the creation of a highway and public right-of-way with evidentiary support.

(8) The board of county or highway district commissioners shall give advance notice of hearing, by U.S. mail, to any landowner upon or within whose land the highway or public right-of-way is located whenever a highway or public right-of-way is proposed for inclusion on such map and the public status of such highway or public right-of-way is not already a matter of public record. The purpose of this official map is to put the public on notice of those highways and public rights-of-way that the board of county or highway district commissioners considers to be public. The inclusion or exclusion of a highway or public right-of-way from such a map does not, in itself, constitute a legal determination of the public status of such highway or public right-of-way. Any person may challenge, at any time, the inclusion or exclusion of a highway or public right-of-way from such map by initiating proceedings as described in section 40-208(7), Idaho Code.

(9) Nothing in this section or in any designation of the general location of a highway or public right-of-way shall authorize the public highway agency to assert or claim rights superior to or in conflict with any rights-of-way that resulted from the creation of a facility for the transmission of water which existed before the designation of the location of a highway or public right-of-way.

History.

I.C., § 40-202, as added by 1985, ch. 253, § 2, p. 586; am. 1986, ch. 206, § 2, p. 512; am. 1988, ch. 184, § 2, p. 322; am. 1992, ch. 55, § 1, p. 160; am. 1993, ch. 412, § 3, p. 1505; am. 1995, ch. 121, § 1, p. 522; am. 1998, ch. 184, § 1, p. 673; am. 2000, ch. 251, § 1, p. 709; am. 2013, ch. 239, § 3, p. 560.

STATUTORY NOTES

Amendments.

The 2013 amendment, by ch. 239, substituted "its jurisdiction" for "their jurisdiction" in paragraph (1)(a); in subsection (6), inserted "at least" near the beginning and "highways and" near the end of the first sentence; inserted subsections (7) and (8); and redesignated former subsection (7) as subsection (9).

Legislative Intent.

Section 1 of S.L. 2013, ch. 239 provides: "Legislative Intent. It is the intent of the Legislature to address right-of-way issues brought forward during the testimony and discussion before the Senate Transportation Committee in the 2012 legislative session relating to House Bill No. 628, as amended. During the 2012 interim session, the President Pro Tempore of the Senate and the Speaker of the House of Representatives established an Interim Task Force encompassing members of the Idaho Senate and the House of Representatives to further study these issues. On October 1, 2012, the Right-of-Way Task Force convened and accepted extensive testimony from stakeholders that included representatives of utility companies, counties and highway districts, irrigation districts and canal companies and various members of the public. It is further the intent of the Legislature to protect private property rights and ensure adequate public rights-of-way for transportation, utility and irrigation and other public facilities. It is the intent of the Legislature that this act shall apply to any and all existing and future highways and public rights-of-way and provide for an immediate implementation date due to the year delay in passing needed legislation, as a result of the yearlong task force efforts and the immediate need to provide clarity regarding the status or abandonment of highways and public rights-of-way."

Effective Dates.

Section 7 of S.L. 2013, ch. 239 declared an emergency. Approved April 2, 2013.

JUDICIAL DECISIONS

ANALYSIS

Constitutionality.
Highways by prescription.

Constitutionality.

Determination that a road was a public highway by prescription did not violate the owners' rights to procedural and substantive due process or result in an unconstitutional taking. The owners were put on notice by the public use of the road and had a hearing; there was a rational basis for the application of § 40-2312 to fix the width of the right-of-way; and an inverse condemnation claim was time-barred under § 5-224. Halvorson v. N. Latah County Highway Dist., 151 Idaho 196, 254 P.3d 497, cert. denied, — U.S. —, 132 S. Ct. 118, 181 L. Ed. 2d 42 (2011).

Highways by Prescription.

Although §§ 40-203A and 40-1310 contemplate a validation proceeding and action by the highway district, in a suit asserting tort and constitutional claims the district court could determine that a road was a public highway by prescription, and evidence of long-term public use and public maintenance supported that finding. Halvorson v. N. Latah County Highway Dist., 151 Idaho 196, 254 P.3d 497, cert. denied, — U.S. —, 132 S. Ct. 118, 181 L. Ed. 2d 42 (2011).

40-203. Abandonment and vacation of county and highway district system highways or public rights-of-way. — (1) A board of county or highway district commissioners, whichever shall have jurisdiction of the highway system, shall use the following procedure to abandon and vacate any highway or public right-of-way in the county or highway district system including those which furnish public access to state and federal public lands and waters:

(a) The commissioners may by resolution declare their intention to abandon and vacate any highway or public right-of-way, or to reclassify a public highway as a public right-of-way, where doing so is in the public interest.

(b) Any resident, or property holder, within a county or highway district system including the state of Idaho, any of its subdivisions, or any agency of the federal government may petition the respective commissioners for abandonment and vacation of any highway or public right-of-way within their highway system. The petitioner shall pay a reasonable fee as determined by the commissioners to cover the cost of the proceedings.

(c) The commissioners shall establish a hearing date or dates on the proposed abandonment and vacation.

(d) The commissioners shall prepare a public notice stating their intention to hold a public hearing to consider the proposed abandonment and vacation of a highway or public right-of-way which shall be made available to the public not later than thirty (30) days prior to any hearing and mailed to any person requesting a copy not more than three (3) working days after any such request.

(e) At least thirty (30) days prior to any hearing scheduled by the commissioners to consider abandonment and vacation of any highway or public right-of-way, the commissioners shall mail notice by United States mail to known owners and operators of an underground facility, as defined in section 55-2202, Idaho Code, that lies within the highway or public right-of-way.

(f) At least thirty (30) days prior to any hearing scheduled by the

commissioners to consider abandonment and vacation of any highway or public right-of-way, the commissioners shall mail notice to owners of record of land abutting the portion of the highway or public right-of-way proposed to be abandoned and vacated at their addresses as shown on the county assessor's tax rolls and shall publish notice of the hearing at least two (2) times if in a weekly newspaper or three (3) times if in a daily newspaper, the last notice to be published at least five (5) days and not more than twenty-one (21) days before the hearing.

(g) At the hearing, the commissioners shall accept all information relating to the proceedings. Any person, including the state of Idaho or any of its subdivisions, or any agency of the federal government, may appear and give testimony for or against abandonment.

(h) After completion of the proceedings and consideration of all related information, the commissioners shall decide whether the abandonment and vacation of the highway or public right-of-way is in the public interest of the highway jurisdiction affected by the abandonment or vacation. The decision whether or not to abandon and vacate the highway or public right-of-way shall be written and shall be supported by findings of fact and conclusions of law.

(i) If the commissioners determine that a highway or public right-of-way parcel to be abandoned and vacated in accordance with the provisions of this section has a fair market value of twenty-five hundred dollars ($2,500) or more, a charge may be imposed upon the acquiring entity, not in excess of the fair market value of the parcel, as a condition of the abandonment and vacation; provided, however, no such charge shall be imposed on the landowner who originally dedicated such parcel to the public for use as a highway or public right-of-way; and provided further, that if the highway or public right-of-way was originally a federal land right-of-way, said highway or public right-of-way shall revert to a federal land right-of-way.

(j) The commissioners shall cause any order or resolution to be recorded in the county records and the official map of the highway system to be amended as affected by the abandonment and vacation.

(k) From any such decision, a resident or property holder within the county or highway district system, including the state of Idaho or any of its subdivisions or any agency of the federal government, may appeal to the district court of the county in which the highway or public right-of-way is located pursuant to section 40-208, Idaho Code.

(2) No highway or public right-of-way or parts thereof shall be abandoned and vacated so as to leave any real property adjoining the highway or public right-of-way without access to an established highway or public right-of-way. The burden of proof shall be on the impacted property owner to establish this fact.

(3) In the event of abandonment and vacation, rights-of-way or easements shall be reserved for the continued use of existing sewer, gas, water, or similar pipelines and appurtenances, or other underground facilities as defined in section 55-2202, Idaho Code, for ditches or canals and appurtenances, and for electric, telephone and similar lines and appurtenances.

(4) When a county or highway district desires the abandonment or vacation of any highway, public street or public right-of-way which was accepted as part of a platted subdivision said abandonment or vacation shall be accomplished pursuant to the provisions of chapter 13, title 50, Idaho Code.

(5) In any proceeding under this section or section 40-203A, Idaho Code, or in any judicial proceeding determining the public status or width of a highway or public right-of-way, a highway or public right-of-way shall be deemed abandoned if the evidence shows:

(a) That said highway or public right-of-way was created solely by a particular type of common law dedication, to wit, a dedication based upon a plat or other document that was not recorded in the official records of an Idaho county;

(b) That said highway or public right-of-way is not located on land owned by the United States or the state of Idaho nor on land entirely surrounded by land owned by the United States or the state of Idaho nor does it provide the only means of access to such public lands; and

(c)(i) That said highway or public right-of-way has not been used by the public and has not been maintained at the expense of the public in at least three (3) years during the previous fifteen (15) years; or

(ii) Said highway or right-of-way was never constructed and at least twenty (20) years have elapsed since the common law dedication.

All other highways or public rights-of-way may be abandoned and vacated only upon a formal determination by the commissioners pursuant to this section that retaining the highway or public right-of-way for use by the public is not in the public interest, and such other highways or public rights-of-way may be validated or judicially determined at any time notwithstanding any other provision of law. Provided that any abandonment under this subsection shall be subject to and limited by the provisions of subsections (2) and (3) of this section.

History.

I.C., § 40-203, as added by 1985, ch. 253, § 2, p. 586; am. 1986, ch. 206, § 3, p. 512; am. 1986, ch. 328, § 4, p. 803; am. 1992, ch. 323, § 1, p. 958; am. 1993, ch. 412, § 4, p. 1505; am. 1995, ch. 121, § 2, p. 522; am. 2000, ch. 251, § 2, p. 709; am. 2013, ch. 239, § 4, p. 560.

STATUTORY NOTES

Amendments.

The 2013 amendment, by ch. 239, in paragraph (1)(a), substituted "or to reclassify a public highway as a public right-of-way, where doing so is" for "considered no longer to be"; added the last sentence in subsection (2); substituted "shall be reserved" for "may be reserved" near the beginning of subsection (3); deleted former subsections (4) and (5), which read, "(4) A highway abandoned and vacated under the provisions of this section may be reclassified as a public right-of-way. (5) Until abandonment is authorized by the commissioners, public use of the highway or public right-of-way may not be restricted or impeded by encroachment or installation of any obstruction restricting public use, or by the installation of signs or notices that might tend to restrict or prohibit public use. Any person violating the provisions of this subsection shall be guilty of a misdemeanor"; redesignated former subsection (6) as subsection (4); and added present subsection (5).

Legislative Intent.

Section 1 of S.L. 2013, ch. 239 provides: "Legislative Intent. It is the intent of the Legislature to address right-of-way issues brought forward during the testimony and discussion before the Senate Transportation Committee in the 2012 legislative session

relating to House Bill No. 628, as amended. During the 2012 interim session, the President Pro Tempore of the Senate and the Speaker of the House of Representatives established an Interim Task Force encompassing members of the Idaho Senate and the House of Representatives to further study these issues. On October 1, 2012, the Right-of-Way Task Force convened and accepted extensive testimony from stakeholders that included representatives of utility companies, counties and highway districts, irrigation districts and canal companies and various members of the public. It is further the intent of the Legislature to protect private property rights and ensure adequate public rights-of-way for transportation, utility and irrigation and other public facilities. It is the intent of the Legislature that this act shall apply to any and all existing and future highways and public rights-of-way and provide for an immediate implementation date due to the year delay in passing needed legislation, as a result of the yearlong task force efforts and the immediate need to provide clarity regarding the status or abandonment of highways and public rights-of-way."

Effective Dates.

Section 7 of S.L. 2013, ch. 239 declared an emergency. Approved April 2, 2013.

JUDICIAL DECISIONS

Abandonment.

Bona fide purchaser for value defense was not available to defendant landowner in an action for injunctive relief to enforce a public right to way, because the defense would constitute an abandonment of a county road in contravention of this section. Trunnell v. Fergel, — Idaho —, 278 P.3d 938 (2012).

Cited in: Halvorson v. N. Latah County Highway Dist., 151 Idaho 196, 254 P.3d 497 (2011).

40-203A. Validation of county or highway district system highway or public right-of-way.

JUDICIAL DECISIONS

ANALYSIS

Application.
Power of court.

Application.

County board of commissioners correctly determined that it was in the public interest for the road to be a public highway; there was substantial evidence supporting this finding as the road became public while the underlying land was federal property and a number of people testified that they regularly used the road to access the national forest. Sopatyk v. Lemhi County, 151 Idaho 809, 264 P.3d 916 (2011).

Power of Court.

Although this section and § 40-1310 contemplate a validation proceeding and action by the highway district, the district court had power to determine, in a suit asserting tort and constitutional claims, that a road was a public highway by prescription under § 40-202(3). Evidence of long-term public use and public maintenance supported that finding. Halvorson v. N. Latah County Highway Dist., 151 Idaho 196, 254 P.3d 497, cert. denied, — U.S. —, 132 S. Ct. 118, 181 L. Ed. 2d 42 (2011).

40-203B. Abandonment or assuming control of a highway. — Whenever the Idaho transportation department is either planning to abandon any section or all of a state highway to a county, a city or a highway district or assume control of a section or all of a highway which is under the jurisdiction of a county, city or a highway district, the transportation department shall first obtain the consent of the applicable local highway jurisdiction before it may abandon or assume control of the highway. Consent shall be obtained by passage of a resolution by the local highway jurisdiction assenting to the proposed action of the transportation depart-

ment. Prior to consenting to an abandonment or assumption of the applicable highway, the local highway jurisdiction may conduct a public hearing and also provide notice to any impacted property owners, businesses, industries and enterprises. If consent is not obtained as provided in this section, the action by the transportation department regarding the abandonment of a state highway or assumption of control of a local jurisdiction highway shall be null, void, and of no force and effect.

History.
I.C., § 40-203B, as added by 1990, ch. 60, § 1, p. 136; am. 2013, ch. 141, § 2, p. 336.

STATUTORY NOTES

Amendments.
The 2013 amendment, by ch. 141, inserted the next-to-last sentence.

40-208. Judicial review. — (1) Any resident or property holder within the county or highway district system, including the state of Idaho or any of its subdivisions, or any agency of the federal government, who is aggrieved by a final decision of a board of county or highway district commissioners in an abandonment and vacation or validation proceeding is entitled to judicial review under the provisions of this section.

(2) Proceedings for review are instituted by filing a petition in the district court of the county in which the commissioners have jurisdiction over the highway or public right-of-way within twenty-eight (28) days after the filing of the final decision of the commissioners or, if a rehearing is requested, within twenty-eight (28) days after the decision thereon.

(3) The filing of the petition does not itself stay enforcement of the commissioners' decision. The reviewing court may order a stay upon appropriate terms.

(4) Within thirty (30) days after the service of the petition, or within further time allowed by the court, the commissioners shall transmit to the reviewing court the original, or a certified copy, of the entire record of the proceeding under review. By stipulation of all parties to the review proceedings, the record may be shortened. A party unreasonably refusing to stipulate to limit the record may be ordered by the court to pay for additional costs. The court may require subsequent corrections to the record and may also require or permit additions to the record.

(5) The parties may present additional evidence to the court, upon a showing to the court that such evidence is material to the issues presented to the court. In such case, the court may order that the additional information be presented to the commissioners upon conditions determined by the court. The commissioners may modify their findings and decisions by reason of the additional information and shall file that information and any modifications, new findings, or decisions with the reviewing court.

(6) The review shall be conducted by the court without a jury. The court shall consider the record before the board of county or highway district commissioners and shall defer to the board of county or highway district

commissioners on matters in which such board has appropriately exercised its discretion with respect to the evaluation of the public interest. As to the determination of highway or public right-of-way creation, width and abandonment, the court may accept new evidence and testimony supplemental to the record provided by the county or highway district, and the court shall consider those issues anew. In cases of alleged irregularities in procedure before the commissioners, not shown in the record, proof thereon may be taken in the court. The court, upon request, shall hear oral argument and receive written briefs.

(7) Any person other than a board of county or highway district commissioners seeking a determination of the legal status or the width of a highway or public right-of-way shall first petition for the initiation of validation or abandonment proceedings, or both, as provided for in sections 40-203(1)(b) and 40-203A(1), Idaho Code. If the commissioners having jurisdiction over the highway system do not initiate a proceeding in response to such a petition within thirty (30) days, the person may seek a determination by quiet title or other available judicial means. When the legal status or width of a highway or public right-of-way is disputed and where a board of county or highway district commissioners wishes to determine the legal status or width of a highway or public right-of-way, the commissioners shall initiate validation or abandonment proceedings, or both, as provided for in sections 40-203 and 40-203A, Idaho Code, rather than initiating an action for quiet title. If proceedings pursuant to the provisions of section 40-203 or 40-203A, Idaho Code, are initiated, those proceedings and any appeal or remand therefrom shall provide the exclusive basis for determining the status and width of the highway, and no court shall have jurisdiction to determine the status or width of said highway except by way of judicial review provided for in this section. Provided that nothing in this subsection shall preclude determination of the legal status or width of a public road in the course of an eminent domain proceeding, as provided for in chapter 7, title 7, Idaho Code.

History.
I.C., § 40-208, as added by 1993, ch. 412, § 6, p. 1505; am. 2013, ch. 239, § 5, p. 560.

STATUTORY NOTES

Amendments.
The 2013 amendment, by ch. 239, rewrote the section to the extent that a detailed comparison is impracticable.

Legislative Intent.
Section 1 of S.L. 2013, ch. 239 provides: "Legislative Intent. It is the intent of the Legislature to address right-of-way issues brought forward during the testimony and discussion before the Senate Transportation Committee in the 2012 legislative session relating to House Bill No. 628, as amended. During the 2012 interim session, the President Pro Tempore of the Senate and the Speaker of the House of Representatives established an Interim Task Force encompassing members of the Idaho Senate and the House of Representatives to further study these issues. On October 1, 2012, the Right-of-Way Task Force convened and accepted extensive testimony from stakeholders that included representatives of utility companies, counties and highway districts, irrigation districts and canal companies and various members of the public. It is further the intent of the Legislature to protect private property rights and ensure adequate public rights-of-way for transportation, utility and irrigation and other public facilities. It is the intent of the Legislature that this act shall apply to any and all existing and future highways and public rights-of-way and provide for an immediate implementation date due to the year

delay in passing needed legislation, as a result of the yearlong task force efforts and the immediate need to provide clarity regarding the status or abandonment of highways and public rights-of-way."

Effective Dates.

Section 7 of S.L. 2013, ch. 239 declared an emergency. Approved April 2, 2013.

40-210. Legislative intent — Utility facilities — Coordinated relocation policies — Definitions.

JUDICIAL DECISIONS

Relocation Costs.

Although the legislature has the authority to order public highway agencies to use their best efforts to minimize the cost of relocating utility facilities within a right-of-way, the Idaho public utilities commission does not have that authority. Ada County Highway Dist. v. Idaho Pub. Utils., 151 Idaho 1, 253 P.3d 675 (2011).

CHAPTER 3

IDAHO TRANSPORTATION BOARD

GENERAL

GENERAL

40-310. Powers and duties — State highway system. — The board shall:

(1) Determine which highways in the state, or sections of highways, shall be designated and accepted for the purpose of this title as a part of the state highway system.

(a) In determining which highways or section of highways shall be a part of the state highway system, the board shall consider the relative importance of each highway to cities, existing business, industry and enterprises and to the development of cities, natural resources, industry and agriculture and be guided by statistics on existing and projected traffic volumes. The board shall also consider the safety and convenience of highway users, the common welfare of the people of the state, and of the cities within the state and the financial capacity of the state of Idaho to acquire rights-of-way and to construct, reconstruct and maintain state highways. In making a determination, the board must, before it can abandon, relocate, or replace by a new highway, any highway serving or traversing any city, or the area in which the city is located, specifically find and determine that the benefits to the state of Idaho are greater than the economic loss and damage to the city affected. No highway serving or traversing any city shall be abandoned, relocated or replaced by a new highway serving the area in which a city is located without the board first holding a public hearing in that city. The abandonment shall proceed as set forth in section 40-203B, Idaho Code.

(2) The board shall cause to be prepared and publicly displayed in a

conspicuous place in their offices a complete map of the state highway system in which each section shall be identified by location, length and a control number. The map shall be of a suitable size and scale and contain data and information as deemed appropriate by the board. Periodically, and not less than once each year, the board shall revise and correct the map to record the changes in the designated state highway system resulting from additions, abandonments and relocations. Hand maps of the state highway system shall be issued periodically for public distribution.

(3) Abandon the maintenance of any highway and remove it from the state highway system, when that action is determined by the unanimous consent of the board to be in the public interest.

(4) Locate, design, construct, reconstruct, alter, extend, repair and maintain state highways, and plan, design and develop statewide transportation systems when determined by the board to be in the public interest.

(5) Establish standards for the location, design, construction, reconstruction, alteration, extension, repair and maintenance of state highways, provided that standards of state highways through local highway jurisdictions shall be coordinated with the standards in use for the systems of the respective local highway jurisdictions. The board shall make agreements with local highway jurisdictions having within their limits state highway sections in the category described in section 40-502, Idaho Code, and provide for an equitable division of the maintenance of those sections. The board may also, in the interest of economy and efficiency, arrange to have any or all of the state highway sections within local highway jurisdictions maintained by those local highway jurisdictions, the cost of the work as limited by section 40-502, Idaho Code, to be reimbursed by the state.

(6) Cause to be made and kept, surveys, studies, maps, plans, specifications and estimates for the alteration, extension, repair and maintenance of state highways, and so far as practicable, of all highways in the state, and for that purpose to demand and to receive reports and copies of records from county commissioners, commissioners of highway districts, county engineers and directors of highways and all other highway officials within the state.

(7) Approve and determine the final plans, specifications and estimates for state highways and cause contracts for state highway work to be let by contract in the manner provided by law.

(8) Expend funds appropriated for construction, maintenance and improvement of state highways.

(9) Designate state highways, or parts of them, as controlled-access facilities and regulate, restrict or prohibit access to those highways to serve the traffic for which the facility is intended.

(10) Close or restrict the use of any state highway whenever the closing or restricting of use is deemed by the board to be necessary for the protection of the public or for the protection of the highway or any section from damage.

(11) Designate main traveled state highways as through highways. The traffic on through highways shall have the right-of-way over the traffic on any other highway intersecting with it, provided, that at the intersection of

two (2) through highways the board shall determine which traffic shall have the right-of-way.

(12) Furnish, erect and maintain standard signs on side highways directing drivers of vehicles approaching a designated through highway to come to a full stop before entering or crossing the through highway.

(13) Provide a right-of-way for and supervise the construction of side paths or sidewalks along regularly designated state highways outside the boundaries of incorporated cities and the expenditures for the construction of them may be made from the highway funds of the county or highway districts.

(14) Upon certification and requisition of an appropriate board, commission, governing body, or official head of any state institution and on the approval of the governor, showing the same to be necessary, construct, alter, repair, and maintain the roadways in, through, and about the grounds of state institutions. The construction, alteration, repair and maintenance shall be accomplished and paid for from the state highway account in accordance with the provisions of chapter 7, title 40, Idaho Code. This provision shall not be construed to divest any board, commission, governing body, or official head of an institution their constitutional or statutory powers.

History.
I.C., § 40-310, as added by 1985, ch. 253, § 2, p. 586; am. 1998, ch. 258, § 1, p. 858; am. 2013, ch. 141, § 1, p. 336.

STATUTORY NOTES

Amendments.
The 2013 amendment, by ch. 141, rewrote subsection (1) to the extent that a detailed comparison is impracticable.

Compiler's Notes.
Following the amendment of this section by S.L. 2013, ch. 141, this section has a paragraph (1)(a), but no paragraph (1)(b).

JUDICIAL DECISIONS

Cited in: Wylie v. State, 151 Idaho 26, 253 P.3d 700 (2011).

40-311. Powers and duties — Property.

JUDICIAL DECISIONS

Scope of Valuation.
The director of the Idaho transportation board had the power to sign an accellerated condemnation order on behalf of the board. The accellerated condemnation was properly conducted where the condemned property was valued relative to use as part of a highway widening and interchange; the valuation was not required to include potential increase in value from an unrelated proposed road extension project. State DOT v. HJ Grathol, — Idaho —, 278 P.3d 957 (2012).

40-317. Powers and duties — Cooperative efforts. — The board may:

(1) Cooperate with, and receive and expend aid and donations from the federal government for transportation purposes, and receive and expend donations from other sources for the construction and improvement of any

state highway or transportation project or any project on the federal-aid primary or secondary systems or on the interstate system, including extensions of them within urban areas; and, when authorized or directed by any act of congress or any rule or regulation of any agency of the federal government, expend funds donated or granted to the state of Idaho by the federal government for that purpose, upon highways and bridges not in the state highway system.

(2) Contract jointly with counties, cities, and highway districts for the improvement and construction of state highways.

(3) Cooperate with the federal government, counties, highway districts, and cities for construction, improvement, and maintenance of secondary or feeder highways not in the state highway system.

(4) Cooperate financially or otherwise with any other state or any county or city of any other state, or with any foreign country or any province or district of any foreign country, or with the government of the United States or its agencies, or private agencies or persons, for the erecting, construction, reconstructing, and maintaining of any bridge, trestle, or other structure for the continuation or connection of any state highway across any stream, body of water, gulch, navigable water, swamp or other topographical formation requiring any such structure and forming a boundary between the state of Idaho and any other state or foreign country, and for the purchase or condemnation or other acquisition of right-of-way.

(5) Serve as the state's representative in the designation of forest highways within the state.

(6) Negotiate and enter into bilateral agreements with designated representatives of contiguous states. Agreements may provide for the manning and operation of jointly occupied ports of entry, for the collection of highway user fees, registration fees and taxes which may be required by law, rule and regulation. Agreements may further provide for the collection of these fees and taxes by either party state at jointly occupied ports of entry before authorization is given for vehicles to legally operate within that state or jurisdiction, and for the enforcement of safety, size and weight laws, rules or regulations of the respective states. As to the provisions of title 63, chapter 30, Idaho Code, the state tax commission is hereby authorized to enter into reciprocal agreements with other states concerning the exemption of, or taxation of, persons employed by the state of Idaho or of another state in jointly operated ports of entry. As used is this section, "jointly operated ports of entry" shall mean any state operated facility located within or without this state that employs persons that are direct employees of the state of Idaho and of another state which operates for the mutual benefit of both states.

(7) Pursuant to the authority and process defined in sections 67-2328 and 67-2333, Idaho Code, enter into agreements with authorized representatives of contiguous states for the purpose of establishing reciprocal procedures allowing the Idaho transportation department and contiguous state motor vehicle departments to collect fees for and to issue driver's licenses and identification cards to nonresident individuals in the same manner as would be issued in the individual's home state, provided that no Idaho

driver's license or Idaho identification card may be issued to a nonresident of the state of Idaho and that any reciprocal agreement under this provision shall otherwise be consistent with the driver license compact, chapter 20, title 49, Idaho Code.

(8) Enter into all contracts and agreements with the United States government in the name of the state of Idaho, relating to the survey, construction and maintenance of roads, under the provisions of any act of congress including county and city highways, and submit a program of construction and maintenance as may be required by the United States government or any of its agencies, and do all other things necessary to cooperate and complete those programs.

History.
I.C., § 40-317, as added by 1985, ch. 253, § 2, p. 586; am. 1986, ch. 99, § 1, p. 277; am. 1989, ch. 273, § 1, p. 660; am. 1994, ch. 280, § 2, p. 867; am. 2013, ch. 258, § 1, p. 634.

STATUTORY NOTES

Amendments.
The 2013 amendment, by ch. 258, added present subsection (7) and redesignated former subsection (7) as subsection (8).

CHAPTER 5

IDAHO TRANSPORTATION DEPARTMENT

SECTION.

40-505. Director — Duties and powers.

JUDICIAL DECISIONS

Power.
The director of the Idaho transportation board has the power to sign an order of condemnation on behalf of the board. State DOT v. HJ Grathol, — Idaho —, 278 P.3d 957 (2012).

40-528. Federal transit administration authority. — (1) The Idaho transportation department and its director are the designated recipients for the federal transit administration funding for the rural transit program and the small urban transit program within the state of Idaho.

(2) Notwithstanding the provisions of subsection (1) of this section:

(a) The department is not the designated recipient for large urbanized areas as determined and defined by the United States department of commerce, bureau of the census, and;

(b) The department is not the designated recipient for any qualifying urbanized area identified by the governor prior to July 1, 2011.

History.
I.C., § 40-528, as added by 2012, ch. 22, § 1, p. 77.

CHAPTER 7

APPROPRIATIONS

40-709. Apportionment of funds from highway distribution account to local units of government.

JUDICIAL DECISIONS

Transfer of Highway Funds.

Though § 31-1508 generally prohibits the transfer of any money from one county fund to another, and subsection (7) restricts the use of certain road funds, there are exceptions thereto: the requirement of § 63-806(2) that a county transfer to the warrant redemption fund all money in the county treasury no longer needed, and, in particular, all money to the credit of the county road fund, appears to fall within these exceptions. In re Boise County, 465 B.R. 156 (Bankr. D. Idaho 2011).

CHAPTER 8

TAXES

SECTION.

40-802. Auditor to furnish market value for assessment purposes — Board to make levy. — On or before the third Monday in July of each year the county auditor shall deliver to the secretary of each highway district within the county a statement showing the aggregate market value for assessment purposes of all the taxable property in the district, and showing separately the aggregate market value for assessment purposes of all the taxable property within each included city in each district. The highway district board shall levy the taxes provided for.

History.

I.C., § 40-802, as added by 1985, ch. 253, § 2, p. 586; am. 2012, ch. 38, § 3, p. 115.

STATUTORY NOTES

Amendments.

The 2012 amendment, by ch. 38, substituted "auditor" for "assessor" in the section heading and in the first sentence and substituted "third Monday" for "first Monday" in the first sentence.

Effective Dates.

Section 6 of S.L. 2012, ch. 38 declared an emergency and made this section retroactive to January 1, 2012. Approved March 6, 2012.

CHAPTER 13

HIGHWAY DISTRICTS

SECTION.

40-1308. Power to levy taxes for comprehensive insurance, prosecuting and defending actions, judgments and liabilities.

JUDICIAL DECISIONS

Attorney Fees.

Highway district was entitled to attorney fees under § 12-117 because it was a taxing district pursuant to § 63-3101 and this section, and property owners' tort, takings, and due process constitutional claims arising from highway maintenance lacked a reasonable basis. Halvorson v. N. Latah County Highway Dist., 151 Idaho 196, 254 P.3d 497, cert. denied, — U.S. —, 132 S. Ct. 118, 181 L. Ed. 2d 42 (2011).

40-1309. Corporate powers of highway districts. — Each highway district has power:

(1) To sue and be sued.

(2) To purchase and hold lands, make contracts, purchase and hold personal or real property as may be necessary or convenient for the purposes of this chapter, and to sell and exchange any real or personal property other than public lands which by the constitution and laws of the state are placed under the jurisdiction of the state land board. Personal or real property, no longer useful to the district, not exceeding five thousand dollars ($5,000) in value may be sold by the highway commissioners at a private sale or at any regular board meeting without advertisement. Before disposing of all other personal or real property exceeding five thousand dollars ($5,000) in value, the highway district commissioners shall first conduct a public hearing for which notice shall be published in accordance with the provisions of section 40-206, Idaho Code, and at which hearing any person interested may appear and show cause that such personal or real property is still useful to the district and that the sale or exchange should not be made. Following testimony by all interested persons at the public hearing, the highway district commissioners may adopt a resolution finding that such personal or real property is no longer useful to the district and finding that such personal or real property should be sold or exchanged and establishing procedures for the sale of such personal or real property including, but not limited to, the date and time of the sale and whether the sale will be by live public auction, by receipt of sealed bids or by some other reasonably commercial means. The hearing and sale or exchange shall not be conducted at the same regular meeting and, except as otherwise provided by law, the only notice required for such sale or exchange shall be as set forth in section 67-2343, Idaho Code. Provided however, that before the district disposes of surplus real property at public sale, the district shall first notify any person who owns real property that is contiguous with the surplus real property of the district that such person has first option to purchase the surplus real property for an amount not less than the current appraised value. If more than one (1) adjoining owner wants to purchase the surplus real property, a private auction shall be held for such parties. If no owner of adjoining property exercises his or her option to buy, the district may proceed to public sale. Highway district commissioners, highway directors, employees, and their families must be personally disinterested, directly or indirectly, in the

purchase of property for the use of the highway district, or in the sale of any property belonging to the highway district, or in any contract made by the highway district or other person on behalf of the highway district unless otherwise authorized by law.

(3) To levy and apply ad valorem taxes for purposes under its exclusive jurisdiction as are authorized by law.

History.

I.C., § 40-1309, as added by 1985, ch. 253, § 2, p. 586; am. 1994, ch. 324, § 3, p. 1039; am. 1999, ch. 332, § 7, p. 894; am. 2000, ch. 258, § 1, p. 729; am. 2003, ch. 68, § 3, p. 227; am. 2012, ch. 306, § 1, p. 847.

STATUTORY NOTES

Amendments.

The 2012 amendment, by ch. 306, in subsection (2), substituted "personal or real property" for "personal property" in the first and second sentences, deleted the mention of a resolution before a public hearing in the third sentence, and inserted sentences four and six through eight.

40-1310. Powers and duties of highway district commissioners.

JUDICIAL DECISIONS

Analysis

Power of court.
Scope of power.

Power of Court.

Although § 40-203 and this section contemplate a validation proceeding and action by the highway district, in a suit asserting tort and constitutional claims, the district court had power to determine that a road was a public highway by prescription, as defined by § 40-202(3), and evidence of long-term public use and public maintenance supported that finding. Halvorson v. N. Latah County Highway Dist., 151 Idaho 196, 254 P.3d 497, cert. denied, — U.S. —, 132 S. Ct. 118, 181 L. Ed. 2d 42 (2011).

Scope of Power.

A county highway department's exclusive jurisdiction over its highways and rights-of-way does not extend to matters that do not involve its legitimate interests, including whether a benefitting utility may require a third party to reimburse the utility for some or all of the costs of relocation of facilities belonging to the utility within a public right-of-way. Ada County Highway Dist. v. Idaho Pub. Utils., 151 Idaho 1, 253 P.3d 675 (2011).

40-1312. Grant of powers to be liberally construed.

JUDICIAL DECISIONS

Scope of Power.

A county highway department's exclusive jurisdiction over its highways and rights-of-way does not extend to matters that do not involve its legitimate interests, including whether a benefitting utility may require a third party to reimburse the utility for some or all of the costs of relocation of facilities belonging to the utility within a public right-of-way. Ada County Highway Dist. v. Idaho Pub. Utils., 151 Idaho 1, 253 P.3d 675 (2011).

CHAPTER 14

SINGLE COUNTY-WIDE HIGHWAY DISTRICTS

SECTION.

40-1404B. Vacancies — Filling a mid-term vacancy. — (1) Any vacancy occurring on the highway district board, other than by expiration of the term of office, shall be determined by the remaining highway district board using the criteria established in section 59-901, Idaho Code.

(2) If it is determined that a vacancy has occurred as provided in subsection (1) of this section, the remaining highway district board shall declare there is a vacancy and such vacancy shall be filled as herein provided:

(a) The remaining highway district board shall have thirty (30) days to appoint a person to fill the vacancy.

(b) If a majority of the remaining highway district board so constituted shall be unable to agree upon an appointment of a person to fill the vacancy before the expiration of the thirty (30) day period, the remaining highway district board shall submit a list of three (3) nominations to the governor within five (5) days.

(c) The governor shall fill the vacancy within ten (10) days by appointing a person having the qualifications set forth herein. In the event the remaining highway district board fails to submit a list of three (3) nominations as set forth in this section, the governor shall have an additional ten (10) days to fill the vacancy by appointing a person having the same qualifications at the time of the appointment as those provided by law for election to the office.

(3) The person selected shall be a person who possesses the same qualifications at the time of his appointment as those provided by law for election to the vacant office.

(4) The term of the appointment shall be for the balance of the term of the person replaced.

(5) Appointment pursuant to the provisions of this chapter shall be in writing and filed with the secretary of the highway district, the clerk of the county commissioners and the tax collector of the county.

(6) Any person appointed to fill a vacancy, after filing the official oath and qualifying for the official bond in accordance with the provisions of section 40-1405, Idaho Code, shall possess all the rights and powers, and is subject to all the liabilities, duties and obligations of the office filled.

History.
I.C., § 40-1404B, as added by 2013, ch. 18, § 1, p. 28.

CHAPTER 23
MISCELLANEOUS PROVISIONS

SECTION.

40-2312. Width of highways. — (1) Where the width of a highway is stated in the plat, dedication, deed, easement, agreement, official road book, determination or other document or by an oral agreement supported by clear and convincing evidence that effectively conveys, creates, recognizes or modifies the highway or establishes the width, that width shall control.

(2) Where no width is established as provided for in subsection (1) of this section and where subsection (3) of this section is not applicable, such highways, except bridges and those located within cities, shall be not less than fifty (50) feet wide.

(3) Highways that at the time of a validation or judicial proceeding are not located on land owned by the United States or the state of Idaho or on land entirely surrounded by land owned by the United States or the state of Idaho, and that have not received maintenance at the expense of the public in at least three (3) years during the previous fifteen (15) years, shall be declared to be of such width, and none greater, as is sufficient to accommodate:

(a) The existing physical road surface;

(b) Existing uses of the highway;

(c) Existing features included within the definition of highways in section 40-109(5), Idaho Code;

(d) Such space for existing utilities as has historically been required for ongoing maintenance, replacement and upgrade of such utilities; and

(e) Space reasonably required for maintenance, motorist and pedestrian safety, necessary to maintain existing uses of the highway.

(4) Nothing in this section shall diminish or otherwise limit the authority and rights of irrigation districts, canal companies or other such entities as provided in chapters 11 and 12, title 42, Idaho Code.

(5) Nothing in this section shall diminish or otherwise limit any right of eminent domain as set forth in chapter 7, title 7, Idaho Code.

History.
I.C., § 40-2312, as added by 1985, ch. 253, § 2, p. 586; am. 2013, ch. 239, § 6, p. 560.

STATUTORY NOTES

Amendments.
The 2013 amendment, by ch. 239, rewrote the section to the extent that a detailed comparison is impracticable.

Legislative Intent.
Section 1 of S.L. 2013, ch. 239 provides: "Legislative Intent. It is the intent of the Legislature to address right-of-way issues brought forward during the testimony and discussion before the Senate Transportation Committee in the 2012 legislative session relating to House Bill No. 628, as amended. During the 2012 interim session, the President Pro Tempore of the Senate and the

Speaker of the House of Representatives established an Interim Task Force encompassing members of the Idaho Senate and the House of Representatives to further study these issues. On October 1, 2012, the Right-of-Way Task Force convened and accepted extensive testimony from stakeholders that included representatives of utility companies, counties and highway districts, irrigation districts and canal companies and various members of the public. It is further the intent of the Legislature to protect private property rights and ensure adequate public rights-of-way for transportation, utility and irrigation and other public facilities. It is the intent of the Legislature that this act shall apply to any and all existing and future highways and public rights-of-way and provide for an immediate implementation date due to the year delay in passing needed legislation, as a result of the yearlong task force efforts and the immediate need to provide clarity regarding the status or abandonment of highways and public rights-of-way."

Effective Dates.

Section 7 of S.L. 2013, ch. 239 declared an emergency. Approved April 2, 2013.

JUDICIAL DECISIONS

Applicability.

District court's determination that a road was a public highway by prescription as defined by § 40-202(3) did not violate the owners' rights to procedural and substantive due process or result in an unconstitutional taking because the owners were put on notice by the public use of the road and had a hearing; there was a rational basis for the application of this section to fix the width of the right-of-way and an inverse condemnation claim was time-barred under § 5-224. Halvorson v. N. Latah County Highway Dist., 151 Idaho 196, 254 P.3d 497, cert. denied, — U.S. —, 132 S. Ct. 118, 181 L. Ed. 2d 42 (2011).

Cited in: Sopatyk v. Lemhi County, 151 Idaho 809, 264 P.3d 916 (2011).

40-2319. Encroachments — Removal — Notice — Penalty for failure to remove — Removal by county or highway district — Abatement. — (1) If any highway or public right-of-way under the jurisdiction of a county or highway district is encroached upon by gates, fences, buildings, or otherwise, the appropriate county or highway district may require the encroachment to be removed.

(2) If the county or highway district has actual notice of an encroachment that is of a nature as to effectually obstruct and prevent the use of an open highway for vehicles or is unsafe for pedestrian or motorist use of an open highway, the county or highway district shall immediately cause the encroachment to be removed without notice.

(3) If the county or highway district elects to remove an encroachment as provided for in subsection (1) of this section, notice shall be given to the occupant or owner of the land, or person causing or owning the encroachment, or left at his place of residence if he resides in the highway jurisdiction. If not, it shall be posted on the encroachment, specifying the place and extent of the encroachment, and requiring him to remove the encroachment within ten (10) days.

(a) If the encroachment is not removed, or commenced to be removed, prior to the expiration of ten (10) days from the service or posting the notice, the person who caused, owns or controls the encroachment shall forfeit up to one hundred fifty dollars ($150) for each day the encroachment continues unremoved;

(b) If the owner, occupant, or person controlling the encroachment, refuses either to remove it or to permit its removal, the county or highway district shall commence in the proper court an action to abate the encroachment. If the county or highway district recovers judgment, it

may, in addition to having the encroachment abated, recover up to one hundred fifty dollars ($150) for every day the encroachment remained after notice, as well as costs of the legal action and removal; or

(c) If the owner, occupant or person controlling the encroachment fails to respond to the notice within five (5) days after the notice is complete, the county or highway district may remove it at the expense of the owner, occupant, or person controlling the encroachment, and the county or highway district may recover costs and expenses, as well as the sum of up to one hundred fifty dollars ($150) for each day the encroachment remained after notice was complete.

(4) The duties referenced in the provisions of this section, whether statutory or common law, require reasonable care only and shall not be construed to impose strict liability or to otherwise enlarge the liability of the county or highway district. The county or highway district, while responsible for their own acts or omissions, shall not be liable for any injury or damage caused by or arising from the encroachment or the failure to remove or abate the encroachment as provided for in subsection (1) of this section. The provision of this section shall not be construed to impair any defense that the county or highway district may assert in a civil action.

(5) Nothing in this chapter shall be construed to limit, abrogate or supersede the provisions of this title governing the power, authority or jurisdiction of a county or highway district, including the authority to regulate the use of highways or public rights-of-way for pedestrian and motorist safety.

History.

I.C., § 40-2319, as added by 1985, ch. 253, § 2, p. 586; am. 2000, ch. 252, § 2, p. 716; am. 2011, ch. 282, § 1, p. 765; am. 2013, ch. 264, § 1, p. 649.

STATUTORY NOTES

Amendments.

The 2013 amendment, by ch. 264, rewrote the section to the extent that a detailed comparison is impracticable.